

(21,276.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 212.

WILSON R. HUNTER, PLAINTIFF IN ERROR,

vs.

MUTUAL RESERVE LIFE INSURANCE COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a New York Supreme Court, Appellate Division, Second Department.

WILSON R. HUNTER, Plaintiff,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Agreed Statement of Facts and Submission of Controversy.

Paul Armitage, Plaintiff's Attorney, 280 Broadway, New York City, N. Y.

George Burnham, Jr., Defendant's Attorney, 309 Broadway, New York City, N. Y.

1 New York Supreme Court, Appellate Division, Second Department.

WILSON R. HUNTER, Plaintiff,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Statement under Rule 41.

The agreed statement of facts and submission of controversy hereinafter set forth were duly filed in the office of the Clerk of the County of Westchester on the 17th day of March, 1904. There has been no change in the parties herein.

2 Supreme Court, County of Westchester.

WILSON R. HUNTER, Plaintiff,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Agreed Statement of Facts and Submission of Controversy.

The following question in difference between Wilson R. Hunter, the plaintiff above named, a person of full age and a citizen of the State of New York, and the Mutual Reserve Life Insurance Company, the defendant above named, a domestic corporation, is hereby submitted to the Appellate Division of the Supreme Court of the State of New York in and for the Second Judicial Department, to wit:

Whether the said Wilson R. Hunter is entitled to recover judgment against the said Mutual Reserve Life Insurance Company for the sum of one thousand and twenty-one and 51/100, with interest thereon from May 5, 1902; and for the further sum of two thousand three hundred and ninety-two and 38/100 (\$2,392.38) dollars, with interest thereon from May 5, 1902; and for the further sum of two

thousand three hundred and ninety-two and 38/100 (\$2,392.38) dollars, with interest thereon from May 5, 1902; and for the further sum of two thousand nine hundred and eighty-six and 18/100 (\$2,986.18) dollars, with interest thereon from May 5, 1902; 3 and for the further sum of one thousand one hundred and seventy-two and 92/100 (\$1,172.92) with interest thereon from May 5, 1902, making in all the sum of nine thousand nine hundred and sixty-five and 37/100 (\$9,965.37) dollars, with interest thereon as aforesaid, or any part thereof, together with costs.

The following case is agreed upon by said parties, containing a statement of the facts upon which the said controversy hereby submitted depends:

First. The Mutual Reserve Fund Life Association was at all the times herein named, prior to the 17th day of April, 1902, a domestic corporation organized for and transacting the business of life insurance upon the cooperative or assessment plan under the laws of the State of New York, originally incorporated on February 9th, 1881, under Chapter 267 of the laws of 1875, and re-incorporated on December 26th, 1883, under Chapter 175 of the laws of 1883 of the State of New York, pursuant to the provisions of said last mentioned Act; and on the 17th day of April, 1902, the said Mutual Reserve Fund Life Association duly amended its Charter and re-incorporated as a mutual life insurance company, under the name of the Mutual Reserve Life Insurance Company under and pursuant to and in compliance with the terms and provisions of Section 52 of the Insurance Law of the State of New York, being Section 52 of Chapter 690 of the laws of 1892, as amended by Chapter 725 of the laws of 1893, and by Chapter 722 of the laws of 1901, of the State of New York.

Second. That in the year 1876 the following statute, which had been theretofore duly adopted by the Legislature of the State of North Carolina, took effect and was then and thereafter in force, namely:

"Section 3, Chapter 157, Laws of 1876-77, of North Carolina.

"SEC. 3. No insurance company, association or partnership, not incorporated by the laws of this state shall directly or indirectly issue policies, take risks or transact business in this 4 state, until it shall have appointed an agent residing in this state who shall act in that capacity until a successor be duly appointed, and upon whom any civil process may be served, and such service shall be binding and shall be personal service upon the company appointing him; a certificate of such appointment under the seal of the company shall be filed with the secretary of state, and copies certified by him shall be sufficient evidence; and this certificate shall contain a stipulation that in case of the death, absence or removal from the state of such agent, the company shall forthwith appoint another agent in his stead, and failing to do so, the secretary of state shall make such appointment, notifying the company thereof; and if such company withdraw from or cease to do business in this state, service upon such agent shall nevertheless be binding

and deemed a personal service upon such company, so long as any liability remains outstanding against the company in this state."

Third. Prior to March 13, 1883, the said Mutual Reserve Life Insurance Company had duly complied with the provisions of said Chapter 157 of the Laws of 1876-77 of North Carolina above set forth, and was duly admitted to transact business in the said State.

Fourth. On March 7, 1883, the Legislature of the State of North Carolina duly adopted the following statute, which took effect and was then and thereafter in force, namely:

"Sec. 1, Chapter 57 Laws of 1883, being the same as Section 3061 Volume 2 of the Code of the State of North Carolina.

"SEC. 3061. Unlawful to contract or solicit insurance with resident of state without a license; contracts entered into otherwise than provided in this chapter not enforceable in state courts. 1883, c. 57, S. 1.

"No person, whether natural or corporate, either as principal or as agent, shall do, or contract for, or solicit any insurance business with any resident of this state unless such insurance business shall have been licensed, as provided in this chapter, and no contract for any such insurance business entered into otherwise than as *as this chapter* permits shall be enforceable in any of the Courts of this State.

"Section 2 Chapter 57 laws of 1883, being the same as Section 3062 Volume 2 of the Code of the State of North Carolina.

"SEC. 3062. Secretary of State to issue licenses; conditions. 1883, c. 57, s. 2.

"The secretary of state may issue licenses to do insurance business but before the issue of any license the applicant therefor shall:

"(1) Appoint a general agent who shall be a citizen and a resident of this state, and file a certificate of such appointment, under the seal of the applicant, together with the written acceptance thereof by such appointee with the secretary of state, and copies of such certificate of appointment and of such acceptance, certified by the said secretary, shall be received as sufficient evidence of such appointment and acceptance before any court in this state, and such certificate shall contain a stipulation agreeing that so long as there may be any liability on the part of the applicant, under any contract entered into in pursuance of any law concerning insurance, any legal process affecting the applicant may be served in his absence upon such general agent, or upon the secretary of state, and when so served, shall have the same effect as if served personally on such applicant in this state: Provided, when such service is made upon the secretary of state it shall be his duty to transmit at once a copy of the process to the home office of the company.

"(2) File in the office of the secretary of state in such form and in such detail as he shall prescribe, a statement of the business standing and financial condition of the applicant on the preceeding thirty-first day of December, signed and sworn to by said principal, or by the chief managing agent or officer thereof, before the secretary of state, or before a commissioner of affidavits for North Carolina, or before some notary public.

"(3) File in the office of the secretary of state a copy of the char-

ter, articles of association, or other statement, showing the mode in which the applicant proposes to do business.

"(4) Pay the license and other fees required by this chapter."

Fifth. Prior to March 13, 1883, the said Mutual Reserve Life Insurance Company, under its former name of Mutual Reserve Fund Life Association, had duly complied with the provisions of the said Chapter 57 of the Laws of 1883 of North Carolina above set forth, and was duly admitted to transact business in the said State.

Sixth. On March 6, 1899, the Legislature of the State of North Carolina duly adopted the following statute, known as the Willard Law, which took effect and was then and thereafter in force, namely:

"Chapter 54 of the Laws of 1899 of North Carolina.

"SEC. 3. There is hereby established a separate and distinct department which shall be charged with the execution of laws passed in relation to insurance and other subjects placed under this department. The chief officer of said department shall be denomi-

7 nated the insurance commissioner. He shall be paid an annual salary of two thousand dollars, to be paid in monthly installments, which salary shall be in full for all services performed by said commissioner in any capacity, and all fees and moneys collected by him shall be paid into the state treasury monthly.

"SEC. 16. When legal process is served upon him as attorney for a foreign company, under the provisions of section sixty-two, he shall forthwith notify the company of such service by letter prepaid and directed to its secretary, or in the case of a foreign country, to its resident manager, if any, in the United States; and shall within two days after such service forward in the same manner a copy of the process served on him to such secretary or manager, or to such other person as may have been previously designated by the company by written notice filed in the office of the commissioner. As a condition of a valid and effectual service and of the duty of the commissioner in the premises, the plaintiff in such process shall pay to the insurance commissioner at the time of service thereof the sum of two dollars, which the said plaintiff shall recover as taxable costs if he prevails in his suit. The insurance commissioner shall keep a record of all such proceedings which shall show the day and hour of service.

"SEC. 62. No foreign insurance company shall be admitted and authorized to do business until—

"First. It shall deposit with the insurance commissioner a certified copy of its charter or deed of settlement, and a statement of its financial condition and business, in such form and detail as he may require, signed and sworn to by its president and Secretary or other proper officer, and shall pay for the filing of such statement the sum of twenty dollars.

8 "Second. It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that it has, if a stock company, a fully paid up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less

than (\$100,000) one hundred thousand dollars; Provided, that nothing in this subsection shall apply to companies now authorized to do business in this state; and if a mutual company, other than life, that its net cash assets equal to the capital required of like companies on the stock plan; or that it possesses net cash assets of not less than one hundred thousand dollars, or net cash assets of not less than fifty thousand dollars, with also invested assets of not less than one hundred thousand dollars, and, in each case, with additional contingent assets of not less than three hundred thousand dollars, and that such capital or net assets are well invested and immediately available for the payment of losses in this state; and that it insures on any single hazard a sum no larger than one-tenth of its net assets.

"Third. It shall, by a duly executed instrument filed in his office, constitute and appoint the insurance commissioner, or his successor, its true and lawful attorney, upon whom all lawful processes in any action or legal proceedings against it may be served, and therein shall agree that any lawful process against it which may be served upon its said attorney shall be of the same force and validity as if served on the company, and the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this commonwealth. The service of such process shall be made by leaving the same in the hands or office of the insurance commissioner. Copies of such instrument, certified
9 by the insurance commissioner, shall be deemed sufficient evidence thereof, and service upon such attorney shall be deemed sufficient service upon the principal.

"Fourth. It shall appoint as its agent or agents in the state some resident or residents thereof.

"Fifth. It shall obtain from the insurance commissioner a certificate that it has complied with the laws of the state and is authorized to make contracts of insurance.

"SEC. 80. The fees for license issued to any fire, marine or accident insurance company to do business in this State shall be two hundred dollars per annum, and that the fee for license on life insurance companies shall be two hundred and fifty dollars per annum. The fee for license on a company doing a strictly plate glass business, and all other insurance companies not named in this section, shall be one hundred dollars per annum.

"SEC. 117. That chapter twenty-nine, volume eleven of the code; chapter two hundred and ninety-nine, laws of one thousand eight hundred ninety-three (1893); chapter three hundred laws one thousand eight hundred [and] ninety-three (1893); chapter two hundred and seventy (270) and three hundred and twenty-nine (329), and forty-eight (48) laws of one thousand eight hundred [and] ninety-five (1895); chapter one hundred [and] sixty-three (163), and one hundred [and] sixty-seven (167), laws of one thousand eight hundred [and] ninety-seven (1897), are hereby repealed, and any other laws and clauses of laws in conflict with this act be and the same are hereby repealed.

"SEC. 118. This act shall be in force from and after its ratification. Ratified the 6th day of March, A. D. 1899."

Seventh. Pursuant to the statute last referred to, and on the 13th day of April, 1899, said Mutual Reserve Fund Life Association duly executed a power of attorney, as follows:

"Know all men by these presents, that the Mutual Reserve Fund Life Association Company of the City of New York and the State of New York, desiring to transact business in the State of North Carolina in conformity with the laws thereof, does hereby make, constitute and appoint James R. Young, Insurance Commissioner of the State of North Carolina, or his successor, its true and lawful attorney in and for said State, upon whom all lawful processes in any action or legal proceeding against it may be served, subject to and in accordance with all the provisions of the laws of the State of North Carolina now in force, and such other laws as may hereafter be enacted in relation thereto; and said Company does hereby expressly agree that any lawful process against it which may be served upon said James R. Young, Insurance Commissioner, or his successor, shall be of the same force and validity as if served upon this Company, and this authority shall continue in force and irrevocable so long as any liability of the said company remains outstanding in the said State.

"The said company does hereby make, constitute and appoint W. M. Stevenson, of Wilmington, in the county of New Hanover, and State of North Carolina (and a resident of said State, its General Agent to and for said State), upon whom any lawful process may be served, and said Company does hereby stipulate and agree, that any lawful process against it, which may be served upon said General Agent, or his successor, shall be of the same force and effect as if served on said Company in said State.

"In witness whereof, The said Company has to these presents affixed its corporate seal, and caused the same to be subscribed and attested by its President and Secretary, this the 13th day of April, A. D. 1899.

"F. A. BURNHAM, *President*.

"[SEAL.]

CHARLES W. CAMP, *Secretary*."

And the same was duly filed with and in the office of the Commissioner of Insurance of the State of North Carolina on April 17, 1899.

Eighth. After the filing of said power of attorney, but as of April 1st, 1899, the Insurance Commissioner of the State of North Carolina issued to the said Mutual Reserve Fund Life Association a license, as follows:

"No. 37.

"State of North Carolina,
Insurance Department.

"RALEIGH, April 1st, 1899.

"The Mutual Reserve Fund Life Insurance Company of New York, having filed an application with this Department to do business in the State of North Carolina.

"This is to certify, That said Company has complied with the 'North Carolina Insurance Act of 1899,' and is authorized to make in this State contracts of Life Insurance on Assessment Plan.

"And said Company having on the 10th day of April, 1899, paid into this Department the sum of Two Hundred Fifty Dollars, license fee required by law, the said Company is, by these presents, licensed to do the business above named during the Insurance year ending April 1st, 1900, subject to all the provisions of the Laws of this State.

12 "Witness, my hand and official seal, the day and date above written,

"\$250\$.

"JAMES R. YOUNG,

"Insurance Commissioner."

Ninth. Upon February 10, 1899, the following statute known as the Craig Act, was duly adopted by the Legislature of the State of North Carolina, namely:

Chapter 62 of the Laws of 1899 of North Carolina, Entitled "An Act to Provide a Manner in Which Foreign Corporations May Become Domestic Corporations."

"SECTION 1. That every telegraph, telephone, express, insurance, steamboat and railroad company incorporated, created and organized under and by virtue of the laws of any state or government other than that of North Carolina, desiring to own property or to carry on business or to exercise any corporate franchise whatsoever in this state, shall become a domestic corporation of the state of North Carolina by filing in the office of the secretary of state a copy of its charter duly authenticated in the manner directed by law for the authentication of statutes of the state or country under the laws of which such company or corporation is chartered and organized, and a copy of its by-laws duly authenticated by the oath of its secretary. Such corporation shall pay therefor to the secretary of state, to be turned over by him into the state treasury, such fees as are or may be required by law.

"SEC. 2. That if any such charter or by-laws, or any part thereof, filed in the office of the secretary of state shall be in contravention or violation of the laws of this state, such charter or by-laws or such part thereof as are in conflict with the laws of this state shall be
13 null and void in this state.

"SEC. 3. That when any such corporation shall have complied with the provisions of this act above set out, it shall thereupon immediately become a corporation of this state and shall enjoy the rights and privileges and be subject to the liability of corporations of this state the same as if such corporations had been originally created by the laws of this state. It may sue and be sued in all courts of this state and shall be subject to the jurisdiction of the courts of this state as fully as if such corporation were originally created under the laws of the state of North Carolina.

"SEC. 4. That on and after the first day of June, eighteen hun-

dred and ninety-nine, it shall be unlawful for any such corporation to do business or to attempt to do business in this state without having fully complied with the requirements of this act.

"SEC. 5. Any such corporation violating any provision of this act shall forfeit to the state of North Carolina a penalty of two hundred dollars for each and every day after the first day of June, eighteen hundred and ninety-nine, on which such corporation shall have continued to operate or do business without having complied with the requirements of this act. Such penalty shall be recoverable by the treasurer of the state for the benefit of the state of North Carolina, and it shall be his duty to sue for such forfeitures in the superior court of Wake County as the same accrue.

"SEC. 6. No telegraph, telephone, express, insurance, steamboat or railroad company, which is a foreign corporation of another state doing business in North Carolina, shall be allowed to sue in the courts of North Carolina on or after June first, eighteen hundred and ninety-nine, until such foreign corporation has become a domestic corporation, either by a special act of the legislature or under the provisions of this act.

"SEC. 7. No such foreign corporation, mentioned in the preceding section of this act, shall be allowed to enter into a contract in the state of North Carolina on or after the first day of June, eighteen hundred and ninety-nine, nor shall any such contract heretofore or hereafter made or attempted to be made and entered into by such corporation in the State of North Carolina be enforceable by such corporation unless such corporation shall on or before the first day of June, eighteen hundred and ninety-nine, become a domestic corporation under and by virtue of the laws of North Carolina.

"SEC. 8. Any such corporation violating the provisions of this act by doing any business in this state without first becoming a domestic corporation in the manner prescribed by law, shall, in addition to the penalty prescribed in section five of this act, forfeit a penalty of five hundred dollars for each day any such business shall be done by it in the state of North Carolina on and after the first day of June, eighteen hundred and ninety-nine. The amount so forfeited under the provisions of this section shall be recovered by the treasurer of North Carolina and it shall be the duty of said state treasurer to institute suit for same in the Superior Court of Wake County.

"*Provided*, the business contemplated in this section of this act does not embrace such business as is strictly the business of interstate commerce.

"SEC. 9. That all laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

"SEC. 10. That this act shall be in force from and after its ratification.

"Ratified the 10th day of February, A. D. 1899."

15 Tenth. On the 17th day of May, 1899, the said Mutual Reserve Fund Life Association, by its Board of Directors, duly adopted the following preambles and resolutions:

"Whereas:—The Mutual Reserve Fund Life Association has been, for a number of years last past, and still is, licensed to transact the

business of life insurance on the assessment plan in the State of North Carolina; and

"Whereas:—By a recent enactment of the Legislature of that State, known as the Craig Bill, it is required, among other things, that insurance corporations created and organized under and by virtue of the laws of any state or government other than that of North Carolina desiring to own property or to carry on business, or to exercise any corporate franchise whatsoever, within said state shall become a domestic corporation of the said state of North Carolina; and

"Whereas:—It is the sense of this Board that it is neither wise nor prudent for this Association to comply with the provision of said law (the Craig Bill); now therefore be it

Resolved:—By the Board of Directors of the Mutual Reserve Fund Life Association that it does hereby withdraw from the State of North Carolina, and shall forthwith cease the transaction of business therein; that the services of all agents, general or otherwise, in the employ of said Association, and of all local treasurers and collectors within said State of North Carolina, be, and the same hereby are, dispensed with and their employment terminated; and be it further

Resolved:—That the appointments, at any time made, of W. M. Stevenson and of James R. Young as Insurance Commissioner, as the true and lawful attorneys of said Association upon whom lawful processes in any action or legal proceeding against said Association might be served, be, and the same hereby are, canceled, 16 revoked and annul-ed."

And on the 20th day of May, 1899, duly certified and authenticated copies of the same were filed with and in the office of the Hon. James R. Young, then Insurance Commissioner of the State of North Carolina.

Eleventh. The defendant under the name of the Mutual Reserve Fund Life Association transacted the business of life insurance upon the co-operative or assessment plan generally in the State of North Carolina, having local agents in that State, from the year 1883 up to the 17th day of May, 1899.

Twelfth. That policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association, between the year 1883 and the 17th day of May, 1899, have been and are in force in the State of North Carolina, and were in force on January 20 and 21, 1902.

Thirteenth. That on the 18th day of May, 1899, the defendant withdrew all its agents from the State of North Carolina, and since said date has had no agent in the State of North Carolina, this admission being, however, without prejudice to the disputed question as to whether the resolution adopted by the defendant May 17, 1899, purporting to revoke the power of attorney theretofore given to James R. Young, Insurance Commissioner, was effective to revoke and terminate his authority as attorney for service under such power of attorney as regards the plaintiff's assignors.

Fourteenth. That since the 18th day of May, 1899, premiums or

assessments upon policies of the defendant issued by it under its former name of the Mutual Reserve Fund Life Association between the year 1883 and the 17th day of May, 1899, and outstanding in

the State of North Carolina, have been paid to the defendant
17 by being remitted to it direct by mail by the policy-holders at its home office in the City, County and State of New York, where by the terms of the policies such premiums were in each case payable, and such premiums or assessments have been received by the defendant when so remitted by mail at its said home office.

Fifteenth. That since the 18th day of May, 1899, where death losses have occurred in North Carolina under policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association between the year 1883 and the 17th day of May, 1899, the amount of such losses, as adjusted, has from time to time been paid by the defendant to the person entitled to receive the same by mailing a check for the amount of the loss to such person from the home office of the defendant in the City, County and State of New York, where, by the terms of the policies in each case the loss was payable.

Sixteenth. That in June, 1902, a claim was made upon the defendant under a policy issued by the defendant on the life of one Edward Broadhurst, in Washington, in the District of Columbia, where the said Edward Broadhurst resided and died. The validity of this claim was disputed by the defendant and an adjuster was sent to the City of Washington in the District of Columbia, for the purpose of adjusting the loss there. Such adjuster found that the beneficiary resided in the City of Wilmington in the State of North Carolina, and he, therefore, went to that city and adjusted the loss with her there in the month of June, 1902. The adjustment of this particular loss was the only authority the adjuster had at the time and he was sent to make such adjustment only; he did have authority to make the same.

Seventeenth. That on August 19, 1899, Edwin G. Hill, of New Bern, North Carolina, who held a policy issued by the defendant under its former name of the Mutual Reserve Fund Life Association prior to May 17, 1899, died in the City
18 of New Bern, North Carolina, and claim was made upon the defendant under the said policy, and proofs of loss and claim presented to it at its home office in the City of New York, where, under the terms of the policy, the loss was payable. In January, 1900, the defendant through its proper officer, wrote from its home office in New York to the beneficiary under the policy in New Bern, North Carolina, that it was prepared to pay the loss and would forward check for the amount of the same to the Citizens' Bank of New Bern, North Carolina, where the beneficiary could obtain the same upon payment of two post-mortuary calls or assessments due on the policy. The defendant did so mail said check, and on February 15, 1900, the beneficiary under said policy went to the Citizens' Bank of New Bern, obtained the check, and there handed to the cashier of said bank a check for the two post-mortuary assessments to be transmitted to the defendant.

Eighteenth. That in August, 1902, a claim was made upon the defendant under a policy issued by it under its former name of the Mutual Reserve Fund Life Association prior to May 17, 1899, on the life of one Stanley Bratcher, for \$1,000. This claim was disputed by the defendant, and suit was threatened. At that time Col. John W. Hinsdale was a member of the Bar of the State of North Carolina, and had been at times retained by the defendant, and upon the threat of suit in the Bratcher case the defendant retained Col. Hinsdale as an attorney, and he subsequently, during the month of August, 1902, arranged a compromise of the case for \$475/ and drew his draft on the defendant for that amount, which was paid by the defendant on presentation of said draft to it at its home office in the City of New York. The negotiations had by Col. Hinsdale with the other side with reference to this claim were had in the month of August, 1902, in the City of New Bern, North Carolina.

19 Nineteenth. That on the 21st day of January, 1886, the defendant under its former name of the Mutual Reserve Fund Life Association issued and delivered to one Mary E. Carstarphen, in the State of North Carolina, its policy for \$5,000. In October, 1899, Mrs. Carstarphen wrote from North Carolina to the defendant at its home office in the City, County and State of New York, a letter requesting that the amount of her policy be reduced from \$5,000 to \$2,000. The defendant wrote in reply from its home office that upon receipt by it of the old policy of \$5,000 it would re-write the same for \$2,000, and Mrs. Carstarphen mailed the policy to the defendant at its home office in New York, and on October 17, 1899, at such home office, the defendant re-wrote the said policy for \$2,000 instead of \$5,000, and mailed the re-written policy to Mrs. Carstarphen from the *the* home office of the defendant to her in North Carolina.

Twentieth. At all the times mention- herein the Superior Court of Craven County, in the State of North Carolina, was a Court of general jurisdiction, duly created by the laws of said State.

Twenty-first. At all the times herein mentioned there were in force in the State of North Carolina the following statutes, applicable to actions brought in the Superior Court:

"Section 194, Volume 1, of the Code of North Carolina.

"SEC. 194. Actions against foreign corporations, where and by whom brought, C. C. P., s. 361. 1876-'7, c. 170.

"An action against a corporation created by or under the laws of any other state, government, or country, may be brought in the superior court of any county in which the cause of action arose, or in which it usually did business, or in which it has property, or in which the plaintiffs, or either of them, shall reside, in
20 the following cases.

"(1) By a resident of this state for any cause of action.

"(2) By a plaintiff not a resident of this state, when the cause of action shall have arisen, or the subject of the action shall be situated within this state.

"Section 195, Volume 1, of the Code of North Carolina.

"SEC. 195. Change of place of trial. C. C. P., s. 69.

"If the county designated for that purpose in the summons and complaint, be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant, before the time of answering expires, demand in writing that the trial be had in the proper county, and the place of trial be thereupon changed by consent of parties, or by order of the court.

"The court may change the place of trial in the following cases:

"(1) When the county designated for that purpose is not the proper county.

"(2) When the convenience of witnesses and the ends of justice would be promoted by the change.

"(3) When the judge shall have been, at any time, interested as party or counsel. When the place of trial is changed all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed, or by order of court, and the papers shall be filed or transferred accordingly.

21 "Section 199, Volume I, of the Code of North Carolina as follows:

"SEC. 199. Civil actions commenced by summons. C. C. P., s. 70.

"Civil Actions shall be commenced by issuing a summons.

"Section 200, Volume 1 of the Code of North Carolina as follows:

"SEC. 200. Summons in actions returnable to a regular term of the Superior Court. 1876-'7, c. 85, s. 1.

"The summons shall run in the name of the State be signed by the clerk of the Superior Court having jurisdiction to try the action, and shall be directed to the sheriff or other proper officer of the county in which the defendant or one or more of the defendants, resides or may be found. It shall be returnable to the regular term of the superior court of the county, where the plaintiff, or one or more of them, or the defendant, or one or more of them, resides, and from which it issued; and shall command the sheriff, or other proper officer, to summon the defendant, or defendants, to appear at the next ensuing term of the superior court and answer the complaint of the plaintiff, and shall be dated on the day of its issue. The officer to whom the summons is addressed shall note on it the day of its delivery to him, and shall execute it at least ten days before the beginning of the term to which it shall be returnable, and shall return it on the first day of the term.

22 "Section 217, Volume 1 of the Code of North Carolina as follows:

"SEC. 217. Manner of service of summons. C. C. P. s. 82. 1874-5, c. 168, s. 1.

"The summons shall be served by delivering a copy thereof in the following cases:

"(1) If the action be against a corporation to the President or other head of the corporation, Secretary, cashier treasurer, director, managing or local agent thereof; Provided, that any person receiving or collecting moneys within this state for, or on behalf of, any corporation of this or any other state or government, shall be deemed a local agent for the purpose of this section; but such service can be made in respect to a foreign corporation only when it has property within this State, or the cause of action arose therein, or when the plaintiff resides in the state, or when such service can be made within the state, personally upon the president, treasurer or secretary thereof."

Twenty-second. Upon the 18th day of September, 1901, the Supreme Court of the State of North Carolina, in the case of Moore v. Mutual Reserve Fund Life Ass'n, rendered the following decision:

"Decision of the Supreme Court of the State of North Carolina in the case of Moore vs. Mutual Reserve Fund Life Association, Volume 129, page 31 as follows:

"Moore vs. Mutual Reserve Fund Life Association.

"(1) Power of Attorney—Irrevocable—Insurance—Acts 1899, Chap. 54 Sec. 62, Subd. 3.

"A power of attorney conferred on the insurance commissioner by an insurance company in conformity with Acts 1899, 23 Chap. 54, Sec. 62, Subd. 3, is irrevocable so long as the company has liabilities in this state remaining unsatisfied.

"(2) Service of Process—Process—Insurance.

"Service of process on State Insurance Commissioner made in conformity with Acts 1899, Chap. 54, Sec. 62 Subd. 3 is valid, although the insurance company has not domesticated under Acts 1899, Chap. 62.

"Action by L. J. Moore and others against the Mutual Reserve Fund Life Association, heard by Judge A. L. Coble, at Spring Term, 1901, of the Superior Court of Craven County. From a judgment for the defendant, the plaintiffs appealed.

"Simmons & Ward, and W. W. Clark, for the plaintiffs.

"Hinsdale & Lawrence, Sheppard & Sheppard, and T. B. Womack, for the defendant.

"FURCHES, C. J.:

"This appeal involves identically the same question, and no more, than was decided by this Court at its last term, in Biggs vs. Life Association, 128 N. C., 5, and we are bound to reverse the judgment appealed from in this case, or to reverse the judgment of this Court made at its last term. There is no question of the importance of this that may not be sustained by argument on either side.

"While the defendant stands before this Court just as any other foreign corporation would stand, it does not stand just as an in-

dividual would stand. The Legislature would have no power to prescribe terms to an individual as to whether he should be allowed to do business in this State. He would have the natural and constitutional right to do business here, without the permission or comity of the State. That is not so with the defendant. It had no right to do business here without the permission of the State. This being

24 so, the State had the right to prescribe the terms upon which the defendant might carry on its business here. The State having this right, prescribed the terms and the defendant accepted them, and proceeded with its business. The defendant being permitted, proceeded to make contracts with the citizens of the State, and became liable to them under these contracts. One of the provisions upon which the defendant was allowed to do business here was that James R. Young, Insurance Commissioner, and his successors in office should be constituted its agent, upon whom service of process might be made, and that said agency should continue so long as the defendant had any liabilities remaining unsatisfied in this State arising from or out of its said business of insurance. The plaintiff alleges that the defendant is liable to him for a breach of its contract of insurance—a liability of the defendant remaining unsatisfied. If plaintiff's contentions are true, there is still a remaining liability of the defendant unsatisfied. The object of this action is to try that very question, is the defendant liable to the plaintiff upon a breach of its contract of insurance?

"But the defendant comes into Court, makes a special appearance, and in the face of the agreement upon which it was allowed to do business here, denies that it has violated its contract with the plaintiff; and therefore plaintiff has no such claim against it, as plaintiff alleges and for that reason (that is, because the defendant says it is not liable to the plaintiff for anything) the action must stop. We cannot adopt such arguments. It was the duty of the state to protect its citizens against such practices as it seems to us is attempted in this case. It seems to use that the defendant is improperly attempting to evade a liability it has incurred with one of its patrons it had induced to deal with it.

25 "We do not feel called upon to discuss the question of revocability of this power to Young, further than to say that the time fixed in the act of the legislature and in the power itself has not yet been reached, as the defendant admits that it still has outstanding liabilities in this State. It is conceded that, as a general rule, a principal has the right to revoke a power of attorney at any time, whether it is in terms irrevocable or not. But to this general rule there are well-established exceptions as where it is coupled with an interest, or where it is contractual in its nature, given for a consideration and for the protection of some one, or some interest. In our opinion this power falls under this exception to the general rule. It was contractual in its nature: was given upon consideration that defendant should have the right to carry on its business in this state, and for the protection of those who should deal with the defendant.

"We have not cited authorities as we find them cited in the case of Biggs v. this defendant, 128 N. C. 5.

"There is error, and the judgment of the Court below is reversed.

"The cases of Taylor v. Life Association, St. John's Lodge v. Life Association, Hancock v. Life Association, Pope v. Life Association, Moore & Wife v. Life Association, Foy v. Life Association, Barnum v. Life Association, Tisdale and wife v. Life Association, Tisdale and Hackburn v. Life Association, all involved the same point as that involved in Moore v. Life Association, and were argued together. And upon the ruling of the Court in the first case (Moore v. Life Association) the judgment of the Court below is reversed in all of them.

"Reversed."

Twenty-third. Upon the 5th day of March, 1901, the Supreme Court of the State of North Carolina, in the case of Biggs v. Life Ass'n, rendered the following decision:

26 "Biggs vs. Life Association. Filed March 5, 1901.

"(1) Power of Attorney—Irrevocable—Insurance Acts 1899, ch. 54.

"A power of attorney made in conformity with Acts 1899, ch. 54 Sec. 62, subd. 3, is irrevocable.

"(2) Process—Service—Insurance.

"Service of Process upon State Insurance Commissioner is valid notwithstanding the insurance company attempted to annul the power of attorney conferred upon him under Acts 1899, ch. 54, Sec. 62, Subd. 3, and did not domesticate under Acts 1899 ch. 62.

"Action by Noah Biggs against the Mutual Reserve Fund Life Association, heard by Judge A. L. Coble, upon agreed state of facts, at November Term, 1900, of Halifax County Superior Court. From a judgment for defendant, the plaintiff appealed.

"W. A. Dunn and Spier Whitaker for the plaintiff.

"J. W. Hinsdale, Shepherd & Shepherd and R. C. Lawrence, for the defendant.

"CLARK, J.:

"By virtue of chap. 54, sec. 62 sub-sec. 3, laws of 1899, one of the conditions precedent upon which a foreign insurance company should be authorized to do business in this state was that such company should file a duly executed instrument with the Insurance Commissioner, appointing him its attorney, upon whom all lawful process against said Company could be served, "the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this commonwealth." The defendant accepted these terms, and on 13th April, 1899, filed its duly executed power of attorney to the required purport with the Insurance Commissioner wherein it is stipulated and agreed by said company, "said company, does hereby expressly agree that
27 any lawful process against it, which may be served upon said James R. Young, Insurance Commissioner, or his suc-

cessor, shall be of the same force and validity as if served upon the company, and this authority shall continue in force irrevocable so long as any liability of said company remains outstanding in the said state.

"The state had the right to prescribe the conditions upon which a non-resident corporation would be permitted to do business here. *Paul v. Virginia*, 75 U. S., 168, and cases cited thereunder: 7 Notes U. S. Rep., 33; 6 *Thomp. Corp.*, Sec. 8028, *Gibson v. Insurance Co.*, 144 Mass. 81; *Parks v. Accident Association*, 100 Iowa 466, *Strauss v. Insurance Co.*, 126 N. C., 223. The object in requiring some one to be appointed upon whom process could be served is apparent. If that appointment could be revoked by the company at will, the end sought to be obtained would be as illusory as a will o' the wisp, which fleets when it is sought to grasp it. The defendant has, since 17th May, 1899, ceased to do any business in this State. 'through any local officer or agent.'"

"Without discussing whether it is 'Ceasing to do business in this State,' to transact that business through agents located outside the state by means of the mail (*Insurance Co. v. Spratley*, 172 U. S. 603) it is sufficient to point out that the statute requires the power of attorney to be irrevocable not 'as long as the company continues to do business' in this State, but as long as 'any liability of the company remains outstanding' in this State, and the contract with the State as expressed in the power of attorney filed by the company so specifies. No amount of authorities having a more or less fancied analogy can overcome these plain words of the statute and of the power of attorney drawn and filed in conformity thereto. *Green v. Life Association*, 105 Iowa 628, *Insurance Co. v. Gillet*, 54

28 Md. 213. Indeed it does not even appear that the defendant has ceased doing business in this state, otherwise than through local agents. *Insurance Co. v. Spratley*, 172 U. S. 603.

"The plaintiff seeks to enforce an outstanding liability against the defendant, and the service of process upon the Insurance Commissioner was valid service.

"The fact that the defendant's attempt to become a domestic corporation of this state under the terms of the 'Craig Law,' chp. 62, Laws of 1899, was declared to be a nullity and the defendant was held not to be a domestic corporation, has no bearing upon this question.

"Upon the facts agreed the judgment of the Court below was erroneous and must be reversed.

"Reversed."

Twenty-fourth. Upon February 2, 1895, the said Mutual Reserve Life Insurance Company, under its former name of Mutual Reserve Fund Life Association, entered into and made a contract of insurance with and on the life of Benjamin T. Bardin, a citizen of North Carolina, and issued its certain certificate of membership or policy of insurance as evidence thereof, to the said Benjamin T. Bardin, and transmitted the same to said Benjamin T. Bardin upon the said February 2, 1885, to the City of Fair Bluffs, in the State of North Carolina, where the said Benjamin T. Bardin then resided.

Twenty-fifth. On January 20, 1902, a summons was issued out of the said Superior Court for the County of Craven, in the State of North Carolina, at the instance of and in favor of one Rufus W. Hicks, a citizen of and resident of said County of Craven in the state of North Carolina, as follows:

29 "Craven County, in the Superior Court.

"RUFUS W. HICKS

"against

"MUTUAL RESERVE FUND LIFE ASSOCIATION.

"Summons for Relief.

"The State of North Carolina to the Sheriff of Wake County, Greeting:

"You are hereby commanded to summon Mutual Reserve Fund Life Association, the defendant above named, if it be found within your County, to be and appear before the Judge of our Superior Court, at a Court to be held for the County of Craven at the Court House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let the said Defendant take notice that if it fail to answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not, and of this Summons make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

"WM. WATSON,

Clerk Superior Court."

"[SEAL.]

Twenty-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

"Rufus W. Hicks vs. Mutual Reserve Fund Life Association. Summons for relief served January 21st, 1902, by exhibiting the within summons and by delivering a copy thereof to J. R. Young, insurance commissioner of North Carolina. At the same time I paid to him \$2.00 as required by law. Receipt hereto attached."

Twenty-seventh. As stated in the said return, the sheriff of Wake County of North Carolina did on the 21st day of January, 1902, exhibit to J. R. Young, then insurance commissioner of the State of North Carolina, the original of said summons and did deliver to the said J. R. Young, as such insurance commissioner, a copy of the said summons, and did pay to the said J. R. Young, insurance commissioner, the sum of \$2.00, the fees required by law therefor.

Twenty-eighth. Thereafter and on the same day, to wit: January

21, 1902, the said J. R. Young, as insurance commissioner of the State of North Carolina, wrote and mailed to the Secretary of the defendant herein the following letter:

"RALEIGH, January 21, 1902.

"Secretary of Mutual Reserve Fund Life Association, New York City.

"GENTLEMEN: As required under our law, I take pleasure in enclosing you a copy of the summons this day served upon me in the case of Rufus W. Hicks against the Mutual Reserve Fund Life Association. The summons is issued from the County of Craven. If I can serve you further in the matter, kindly advise me.

"Very truly yours,

J. R. YOUNG,

"Insurance Commissioner."

which in due course of mail was received by the Secretary of said defendant at the office thereof in the State of New York, and in which was enclosed when mailed and received, a copy of said summons.

31 Twenty-ninth. Within the time required by law the plaintiff named in said summons filed in the Superior Court of Craven County in said State a complaint in the said action, in which complaint was set forth a cause of action against the said Mutual Reserve Fund Life Association to recover damages for the breach of said contract of insurance made by and between said Benjamin T. Bardin and the said Mutual Reserve Fund Life Association dated February 2, 1885, and assigned to Rufus W. Hicks upon March 14, 1885, said breach claimed being the increase of assessments demanded by the said Mutual Reserve Fund Life Association from said Rufus W. Hicks upon December 1, 1898, the amount of damages claimed in said complaint being all assessments and dues paid on account of the said policy of insurance and amounting in all to the sum of twelve hundred dollars (\$1,200), with interest on each payment of each assessment from the date thereof.

Thirtieth. At all the times herein mentioned, the said Benjamin T. Bardin and Rufus W. Hicks were and now are citizens and residents of the State of North Carolina.

Thirty-first. That no answer or appearance by or on behalf of the said Mutual Reserve Fund Life Association was at any time interposed or entered in the said action of the said Rufus W. Hicks, in the Superior Court of Craven County, in the State of North Carolina.

Thirty-second. That at the May Term, 1902, of the said Superior Court, for Craven County, in the State of North Carolina, duly and regularly called and held, commencing the 5th day of May, 1902, judgment by default was rendered upon the complaint so filed as aforesaid, and on the return or service made as hereinbefore set forth and described against the said Mutual Reserve Fund Life Association, and in favor of the said Rufus W. Hicks for the sum of

32 one thousand one hundred and fifty-three and 97/100 (\$1,153.97) dollars, with interest thereon from the 5th day of May, 1902, together with eighteen and 95/100 (\$18.95) dollars costs.

Thirty-third. Thereafter said judgment was duly assigned by mesne assignments to the plaintiff Wilson R. Hunter.

Thirty-fourth. Upon April 19, 1888, the said Mutual Reserve Fund Life Association entered into and made a contract of insurance with and on the life of Ina C. Davis, who then and at all times herein mentioned was and now is a citizen and resident of the State of New Jersey, and issued its certain certificate of membership or policy of insurance as evidence thereof, and the said certificate of membership or policy of insurance was transmitted on the said date, April 19, 1888, to the said Ina C. Davis at the City of Newark, New Jersey, where he then resided.

Thirty-fifth. Upon January 20, 1902, a summons was issued out of the said Superior Court for the County of Craven in the State of North Carolina at the instance of and in favor of Enoch Wadsworth and Ina C. Davis of whom the said Enoch Wadsworth then and at all times herein mentioned was and now is a citizen and resident of the State of North Carolina, as follows:

Craven County, in the Superior Court.

"ENOCH WADSWORTH and INA C. DAVIS
"against

"MUTUAL RESERVE FUND LIFE ASSOCIATION.

Summons for Relief.

"The State of North Carolina to the Sheriff of Wake County,
Greeting:

"You are hereby commanded to summon Mutual Reserve Fund Life Association, the defendant above named, if it be found
33 within your County, to be and appear before the Judge of our Superior Court, at a Court to be held for the County of Craven at the Court House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let the said Defendant take notice that if it fail to answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not, and of this Summons *mons* make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

"[SEAL.]

WM. WATSON,
Clerk Superior Court."

Thirty-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

"Enoch Wadsworth and Ina C. Davis vs. Mutual Reserve Fund

House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let said Defendant take notice that if it fail to

37 answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not, and of this Summons make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

"[SEAL.]

WM. WATSON,
"Clerk Superior Court."

Forty-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

"Enoch Wadsworth and Isaac Meinhard vs. Mutual Reserve Fund Life Association. Summons for relief served January 21st, 1902, by exhibiting the within summons and by delivering a copy thereof to J. R. Young, insurance commissioner of North Carolina. At the same time I paid to him \$2.00 as required by law. Receipt hereto attached."

Forty-seventh. As stated in the said return, the sheriff of Wake County of North Carolina did on the 21st day of January, 1902, exhibit to J. R. Young, then insurance commissioner of the State of North Carolina, the original of said summons and did deliver to the said J. R. Young, as such insurance commissioner, a copy of the said summons, and did pay to the said J. R. Young, insurance commissioner, the sum of \$2.00, the fees required by law therefor.

Forty-eighth. Thereafter and on the same day, to wit: January 21, 1902, the said J. R. Young, as insurance Commissioner of the State of North Carolina, wrote and mailed to the Secretary of the defendant herein the following letter:

38 "RALEIGH, January 21, 1902.

"Secretary of the Mutual Reserve Fund Life Association, New York City.

"GENTLEMEN: As required under our law, I take pleasure in enclosing you a copy of the summons this day served upon me in the case of Enoch Wadsworth and Isaac Meinhard against the Mutual Reserve Fund Life Association. The summons is issued from the County of Craven. If I can serve you further in the matter, kindly advise me.

"Very truly yours,

"J. R. YOUNG,
"Insurance Commissioner."

which in due course of mail was received by the secretary of said defendant at the office thereof in the State of New York, and in which was enclosed when mailed and received, a copy of said summons.

Forty-ninth. Within the time required by law the plaintiffs named in said summons filed in the Superior Court of Craven County in the State of North Carolina a complaint in the said action, in which complaint was set forth a cause of action against the said Mutual Reserve Fund Life Association to recover damages for the breach of said contract of insurance made by and between the said Isaac Meinhard and the said Mutual Reserve Fund Life Association upon March 13, 1883, assigned to the said Enoch Wadsworth upon January 11, 1902, said breach claimed being the increase of assessments demanded from said Isaac Meinhard upon August 1, 1898, under said policy. The amount of damages claimed in said complaint by the said plaintiff Enoch Wadsworth being all assessments and dues paid on account of the said policy of insurance, and amounting in all to the sum of one thousand four hundred twenty-five and 21/100 (\$1,425.21) dollars with interest on each payment of each assessment from the date thereof.

39 Fiftieth. At all the times herein mentioned the said Isaac Meinhard was and now is a citizen and a resident of the State of New York, and at the same times the said Enoch Wadsworth was and now is a citizen and resident of the State of North Carolina.

Fifty-first. That no answer or appearance by or on behalf of the said Mutual Reserve Fund Life Association was at any time interposed or entered in the said action of the said Enoch Wadsworth and Isaac Meinhard in the Superior Court of Craven County, in the State of North Carolina.

Fifty-second. That at the May Term, 1902, of the said Superior Court, for Craven County, in the State of North Carolina, duly and regularly called and held, commencing the 5th day of May, 1902, judgment by default was rendered upon the complaint so filed as aforesaid, and on the return of service made as hereinbefore set forth and described against the said Mutual Reserve Fund Life Association, and in favor of the said Enoch Wadsworth for the sum of two thousand three hundred seventy-three 43/100 dollars (\$2373.43), with interest thereon from the 5th day of May, 1902, together with eighteen and 95/100 dollars (\$18.95) costs.

Fifty-third. Thereafter said judgment was duly assigned by mesne assignments to the plaintiff Wilson R. Hunter.

Fifty-fourth. Upon March 13, 1883, the said Mutual Reserve Fund Life Association entered into and made a certain other contract of insurance with and on the life of Isaac Meinhard who then and at all times herein mentioned was and now is a citizen and resident of the State of New York, and issued its certain certificate of membership or policy of insurance as evidence thereof, and the said certificate of membership or policy of insurance was
40 transmitted on the said date, March 13, 1883, to the said Isaac Meinhard at the City of New York, where he then resided.

Fifty-fifth. Upon January 20, 1902, a summons was issued out of the said Superior Court for the County of Craven in the State of North Carolina at the instance of and in favor of Enoch Wadsworth

and Isaac Meinhard of whom the said Enoch Wadsworth then and at all times herein mentioned was and now is a citizen and resident of the State of North Carolina, as follows:

"Craven County, in the Superior Court.

"ENOCH WADSWORTH and ISAAC MEINHARD
"against
"MUTUAL RESERVE FUND LIFE ASSOCIATION.

"Summons for Relief.

"The State of North Carolina to the Sheriff of Wake County, Greeting:

"You are hereby commanded to summon Mutual Reserve Fund Life Association, the defendant above named, if it be found within your County, to be and to appear before the Judge of our Superior Court, at a Court to be held for the County of Craven at the Court House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let the said Defendant take notice that if it fail to answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not, and of this summons make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

[SEAL.]

WM. WATSON,
"Clerk Superior Court.

41 Fifth-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

"Enoch Wadsworth and Isaac Meinhard vs. Mutual Reserve Fund Life Association. Summons for relief served January 21st, 1902, by exhibiting the within summons and by delivering a copy thereof to J. R. Young, insurance commissioner of North Carolina. At the same time I paid to him \$2.00 as required by law. Receipt hereto attached."

Fifty-seventh. As stated in the said return, the sheriff of Wake County of North Carolina did on the 21st day of January, 1902, exhibit to J. R. Young, then insurance commissioner of the State of North Carolina, the original of said summons and did deliver to the said J. R. Young, as such insurance commissioner, a copy of the said summons, and did pay to the said J. R. Young, insurance commissioner, the sum of \$2.00, the fees required by law therefor.

Fifty-eighth. Thereafter and on the same day, to wit: January 21, 1902, the said J. R. Young, as insurance commissioner of the

State of North Carolina, wrote and mailed to the Secretary of the defendant herein the following letter:

"RALEIGH, January 21, 1902.

"Secretary of Mutual Reserve Fund Life Association, New York City.

"GENTLEMEN: As required under our law, I take pleasure in enclosing you a copy of the summons this day served upon me in the case of Enoch Wadsworth and Isaac Meinhard against the Mutual Reserve Fund Life Association. The summons is issued from the County of Craven. If I can serve you further in the matter, kindly advise me.

"Very truly yours,

"J. R. YOUNG,

"Insurance Commissioner."

which in due course of mail was received by the Secretary of said defendant at the office thereof in the State of New York, and in which was enclosed when mailed and received, a copy of said summons.

Fifth-ninth. Within the time required by law the plaintiffs named in said summons filed in the Superior Court of Craven County in the State of North Carolina a complaint in the said action, in which complaint was set forth a cause of action against the said Mutual Reserve Fund Life Association to recover damages for the breach of said contract of insurance made by and between the said Isaac Meinhard and the said Mutual Reserve Fund Life Association upon March 13, 1888, assigned to the said Enoch Wadsworth upon January 11, 1902, said breach claimed being the increase of assessments demanded from said Isaac Meinhard upon August 1, 1898, under said policy. The amount of damages claimed in said complaint by the said plaintiff Enoch Wadsworth being all assessments and dues paid on account of the said policy of insurance and amounting in all to the sum of one thousand four hundred twenty-five 21/100 (\$1,425.21) dollars with interest on each payment of each assessment from the date thereof.

Sixtieth. At all the times herein mentioned the said Isaac Meinhard was and now is a citizen and a resident of the State of New York, and at the same times the said Enoch Wadsworth was and now is a citizen and resident of the State of North Carolina.

Sixty-first. That no answer or appearance by or on behalf of the said Mutual Reserve Fund Life Association was at any time interposed or entered in the said action of the said Enoch Wadsworth and Isaac Meinhard in the Superior Court of Craven County, in the State of North Carolina.

Sixty-second. That at the May Term, 1902, of the said Superior Court, for Craven County, in the State of North Carolina, duly and regularly called and held, commencing the 5th day of May, 1902, judgment by default was rendered upon the complaint so filed as aforesaid, and on the return of service made as hereinbefore set forth and described against the said Mutual Reserve Fund Life Association,

and in favor of the said Enoch Wadsworth for the sum of two thousand three hundred seventy-three $43/100$ (\$2,373.43 dollars, with interest thereon from the 5th day of May, 1902, together with eighteen and $95/100$ (\$18.95) dollars costs.

Sixty-third. Thereafter said judgment was duly assigned by mesne assignments to the plaintiff Wilson R. Hunter.

Sixty-fourth. Upon March 19, 1886, the said Mutual Reserve Fund Life Association entered into and made a contract of insurance with and on the life of Herbert G. Armitage, who then and at all times herein mentioned was and now is a citizen and resident of the State of New York, and issued its certain certificate of membership or policy of insurance as evidence thereof, and the said certificate of membership or policy of insurance was transmitted on the said date, March 19, 1886, to the said Herbert G. Armitage, at the City of New York, where he then resided.

Sixty-fifth. Upon January 20, 1902, a summons was issued out of the said Superior Court for the County of Craven in the State of North Carolina at the instance of and in favor of Enoch Wadsworth and Herbert G. Armitage, of whom the said Enoch Wadsworth
 44 citizen and resident of the State of North Carolina, as follows:

"Craven County, in the Superior Court.

"ENOCH WADSWORTH and HERBERT G. ARMITAGE
 "against
 "MUTUAL RESERVE FUND LIFE ASSOCIATION.

"*Summons for Relief.*

"The State of North Carolina to the Sheriff of Wake County, Greeting:

"You are hereby commanded to summon Mutual Reserve Fund Life Association, the defendant above named, if it be found within your County, to be and appear before the Judge of our Superior Court, at a Court to be held for the County of Craven at the Court House in New Bern, on the 3rd Monday before the 1st Monday of March, it being the 10th day of February, 1902, and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term; and let the said Defendant take notice that if it fail to answer the said complaint within the time required by law, the Plaintiff will apply to the Court for the relief demanded in the complaint. Hereof fail not and of this Summons make due return. Given under my hand and seal of said Court this 20th day of January, 1902.

"[SEAL.]

"WM. WATSON,
 Clerk Superior Court."

Sixty-sixth. Thereafter and within the time required by law the Sheriff of Wake County, in the State of North Carolina, made and filed in the office of the Clerk of the said Superior Court, for the County of Craven, in the State of North Carolina, the following return:

“Enoch Wadsworth and Herbert G. Armitage, vs. Mutual Reserve Fund Life Association summons for relief served January 21st, 1902 by exhibiting the within summons and by delivering a copy thereof to J. R. Young, insurance commissioner of North Carolina. At the same time I paid him \$2.00 as required by law. Receipt hereto attached.”

Sixty-seventh. As stated in the said return, the sheriff of Wake County of North Carolina did on the 21st day of January, 1902, exhibit to J. R. Young, then insurance commissioner of the State of North Carolina, the original of said summons and did deliver to the said J. R. Young, as such insurance commissioner, a copy of the said summons, and did pay to the said J. R. Young, insurance commissioner, the sum of \$2.00, the fees required by law therefor.

Sixty-eighth. Thereafter and on the same day, to wit: January 21, 1902, the said J. R. Young, as insurance commissioner of the State of North Carolina, wrote and mailed to the Secretary of the defendant herein the following letter:

“*RALEIGH, January 21, 1902.*

“Secretary of the Mutual Reserve Fund Life Association, New York City.

“GENTLEMEN: As required under our law, I take pleasure in enclosing you a copy of the summons this day served upon me in the case of Enoch Wadsworth and Herbert G. Armitage against the Mutual Reserve Fund Life Association. The summons is issued from the County of Craven. If I can serve you further in the matter, kindly advise me.

“Very truly yours,

J. R. YOUNG,

“*Insurance Commissioner.*”

which in due course of mail was received by the Secretary of said defendant at the office thereof in the State of New York, and in which was enclosed when mailed and received, a copy of said summons.

Sixty-ninth. Within the time required by law the plaintiffs named in said summons filed in the Superior Court of Craven County in the State of North Carolina a complaint in the said action, in which complaint was set forth a cause of action against the said Mutual Reserve Fund Life Association to recover damages for the breach of said contract of insurance made by and between the said Herbert G. Armitage, and the said Mutual Reserve Fund Life Association upon March 19, 1886, assigned to the said Enoch Wadsworth upon December 14, 1901, said breach claimed being the increase of assessments demanded from said Herbert G. Armitage upon February 1, 1898, under said policy. The amount of damages claimed in said complaint by the said plaintiff Enoch Wadsworth being all assess-

ments and dues paid on account of the said policy of insurance and amounting in all to the sum of one thousand eight hundred seventy-nine 40/100 (\$1,879.40) dollars with interest on each payment of each assessment from the date thereof.

Seventieth. At all the times herein mentioned the said Herbert G. Armitage was and still is a citizen and a resident of the State of New York, and at the same times the said Enoch Wadsworth was and still is a citizen and resident of the State of North Carolina.

Seventy-first. That no answer or appearance by or on behalf of the said Mutual Reserve Fund Life Association was at any time interposed or entered in the said action of the said Enoch Wadsworth and Herbert G. Armitage in the Superior Court of Craven County, in the State of North Carolina.

Seventy-second. That at the May Term, 1902, of the said Superior Court, for Craven County, in the State of North Carolina,
47 duly and regularly called and held, commencing the 5th day of May, 1902, judgment by default was rendered upon the complaint so filed as aforesaid, and on the return of service made as hereinbefore set forth and described against the said Mutual Reserve Fund Life Association, and in favor of the said Enoch Wadsworth for the sum of two thousand nine hundred sixty-seven 23/100 (\$2967.23) dollars, with interest thereon from the 5th day of May, 1902, together with eighteen and 95/100 (\$18.95) dollars costs.

Seventy-third. Thereafter said judgment was duly assigned by mesne assignments to the plaintiff Wilson R. Hunter.

Seventy-fourth. By the law of the State of North Carolina as the same existed at all the times mentioned herein, interest upon a judgment runs at the rate of six per centum per annum.

Seventy-fifth. No part of the said alleged judgments or any of them has been paid by the Mutual Reserve Fund Life Association or by the Mutual Reserve Life Insurance Company or any one on behalf of either said Association or said Company to the plaintiff, Wilson R. Hunter, or to any other person.

Seventy-sixth. An actual controversy exists at the time of this submission between the said parties upon the point hereby presented for decision.

Seventy-seventh. This statement of the facts upon which the said controversy hereby submitted depends shall be filed in the office of the Clerk of the County of Westchester.

Seventy-eighth. On the foregoing facts the plaintiff demands personal judgment against the defendant for the sum of one thousand and twenty-one and 51/100 (\$1,021.51) dollars, with interest thereon from May 5, 1902; and for the sum of two thousand three hundred and ninety-two and 38/100 (\$2,392.38) dollars,
48 with interest thereon from May 5, 1902; and for the sum of two thousand three hundred and ninety-two and 38/100 (\$2,392.38) dollars, with interest thereon from May 5, 1902; and for the sum of two thousand nine hundred and eighty-six and 18/100 (\$2,986.18) dollars, with interest from May 5, 1902; and for the sum of one thousand one hundred and seventy-two and 92/100 (\$1,172.92) dollars, with interest thereon from May 5, 1902,

making in all the sum of nine thousand nine hundred and sixty-five and 37/100 (\$9,965.37) dollars, with interest as aforesaid, or any part thereof, together with costs.

The plaintiff claims that the Superior Court of North Carolina had jurisdiction of the person of the defendant to render the said judgments and each of them. And that full faith and credit be given to the said judgments of the Superior Court of North Carolina and each of them. And the plaintiff claims the benefit and protection of Section 1, of Article IV, of the Constitution of the United States.

The defendant claims that the Superior Court of North Carolina had no jurisdiction of the person of the defendant to render the said judgments or any of them. And that said judgments and each of them were not rendered upon due process of law. And the defendant claims the benefit and protection of the Fifth and Fourteenth Amendments to the Constitution of the United States.

The defendant demands judgment that the plaintiff's claims, and each of them, herein should be dismissed, with costs.

Dated, New York, February 6th, 1904.

WILSON R. HUNTER.

MUTUAL RESERVE LIFE INSURANCE CO.,

By CHARLES W. CAMP, *Secretary*.

[CORPORATE SEAL.]

PAUL ARMITAGE, *Plaintiff's Attorney*.

GEO. BURNHAM, JR., *Defendant's Attorney*.

49 STATE OF NEW YORK,
County of New York, ss:

On this 6th day of February, 1904, before me personally came Wilson R. Hunter, to me known and known to me to be the plaintiff in the foregoing statement of facts and submission, and the person who executed the same, and duly acknowledged to me that he executed the same.

JOHN T. DOOLING,
Commissioner of Deeds, N. Y. City.

STATE OF NEW YORK,
County of New York, ss:

On this 19th day of February, 1904, before me personally came Charles W. Camp, the Secretary of the Mutual Reserve Life Insurance Company, with whom I am personally acquainted, who being duly sworn did depose and say, that he resided in the City of New York; that he is an officer, to wit, the Secretary of the Mutual Reserve Life Insurance Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed thereto by the order of the Board of Directors of said Company; and that he signed his name to the foregoing statement of facts and submission by the like order.

FRANK C. McCARRICK,
Notary Public, N. Y. Co.

50 STATE OF NEW YORK,
County of New York, ss:

Wilson R. Hunter being duly sworn, says: I am the plaintiff named in the foregoing statement of facts and submission. The controversy mentioned in the foregoing statement of facts and submission is real, and the submission is made in good faith for determining the rights of the parties.

WILSON R. HUNTER.

Sworn to before me this 6th day of February, 1904.

JOHN T. DOOLING,

Commissioner of Deeds, N. Y. City.

STATE OF NEW YORK,
County of New York, ss:

Charles W. Camp, being duly sworn, says: I am an officer, to wit, the Secretary, of the Mutual Reserve Life Insurance Company, the defendant named in the foregoing statement of facts and submission. The controversy mentioned in said statement of facts and submission is real, and the submission is made in good faith for determining the rights of the parties.

CHARLES W. CAMP.

Sworn to before me this 19th day of February, 1904.

FRANK C. McCARRICK,

Notary Public, N. Y. Co.

51 New York Supreme Court, Westchester County.

WILSON R. HUNTER, Plaintiff,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

It is hereby stipulated and agreed that the foregoing are correct copies of the agreed statements of facts and submission of controversy, and of the affidavits and certificates thereto attached, in the above entitled matter, filed in the office of the Clerk of the County of Westchester on the 17th day of March, 1904, and of the whole thereof, and the certificate of the Clerk of the County of Westchester with respect thereto is hereby waived.

Dated, March 17, 1904.

PAUL ARMITAGE,
Plaintiff's Attorney.
GEO. BURNHAM, JR.,
Defendant's Attorney.

3621.

STATE OF NEW YORK,
Office of the County Clerk of Westchester County, ss:

I have compared the preceding with the original agreed statement of facts and submission of controversy filed in this office on the 4th

day of Oct., 1904, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 18th day of Oct., 1904.

[Seal Westchester County.]

LESLIE SUTHERLAND,
County Clerk of Westchester County.

52

Supreme Court, Westchester County.

WILSON R. HUNTER, Plaintiff.
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Judgment.

This case having been brought in this court under a statement of facts agreed upon and submitted under section 1279 of the Code of Civil Procedure to the Appellate Division of this court, in the Second Department, by the plaintiff, Wilson R. Hunter and the defendant, Mutual Reserve Life Insurance Company; and the plaintiff having been heard in support of his claim for judgment in his favor upon the facts so agreed upon, and the defendant having been heard in opposition thereto, and due deliberation having been had thereon; and an order having been made by said Appellate Division, dated 29th September 1904, and duly entered, directing that the plaintiff have judgment against the defendant under the stipulation for the sum of Nine thousand nine hundred and sixty-five dollars (\$9965.), with interest thereon from the 5th day of May 1902, together with the costs; and a certified copy of said order having been duly filed in the office of the clerk of the County of Westchester, and the costs and disbursements of the plaintiff having been duly taxed at the sum of Eighty-seven and 17/100 dollars (\$87.17).

Now on motion of Paul Armitage, attorney for the plaintiff it is

Ordered and adjudged, that said plaintiff, Wilson R. Hunter, do recover of the defendant, Mutual Reserve Life Insurance

53 Company, the sum of Nine thousand nine hundred and sixty-five dollars (\$9965), together with interest thereon from the 5th day of May, 1902, amounting to One thousand four hundred and forty-four and 93/100 dollars (\$1444.93) and eighty-seven and 17/100 dollars (\$87.17) costs and disbursements amounting in the whole to Eleven thousand four hundred and ninety-seven and 10/100 dollars (\$11,497.10), and that the plaintiff have execution therefor.

Dated, New York, October 4th, 1904.

LESLIE SUTHERLAND, *Clerk.*

3619.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County, ss:

I have compared the preceding with the original judgment filed in this office on the 4th day of Oct., 1904, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 18th day of Oct., 1904.

[Seal Westchester County.]

LESLIE SUTHERLAND,

County Clerk of Westchester County.

54 At a Term of the Appellate Division of the Supreme Court,
Held in and for the Second Judicial Department at the
Borough of Brooklyn, on the 29th day of September, 1904.

Present: Hon. Michael H. Hirschberg, Presiding Justice.

" " Willard Bartlett,

" " John Woodward,

" " Almet F. Jenks,

" " Warren B. Hooker, Justices.

No. 1.

WILSON R. HUNTER, Plaintiff,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Order on Submission of Agreed Case.

The above named plaintiff, Wilson R. Hunter, and the above-named defendant Mutual Reserve Life Insurance Company, having submitted a controversy for determination by this court, under the provisions of Section 1279 of the Code of Civil Procedure, upon a case containing an agreed statement of facts; and the cause having been argued by Mr. Paul Armitage, of counsel for the plaintiff, and by Mr. Frank R. Lawrence, of counsel for the defendant, and due deliberation having been had thereon, it is hereby

Ordered and adjudged, that the plaintiff have judgment in accordance with the terms of the submission with costs.

Enter.

M. H. HIRSCHBERG, P. J.

55 Supreme Court, Appellate Division, Second Judicial Department.

CLERK'S OFFICE,

Borough of Brooklyn, N. Y.:

I John B. Byrne Clerk of the Appellate Division of the Supreme Court in the Second Judicial Department do hereby certify that the

foregoing is a copy of the order made by said court upon the — in the above entitled action submitted to this court under section 1279 of the Code of Civil Procedure and entered in my office on the 29th day of September 1904 and that the original case upon which said appeal was heard are hereto annexed.

In witness whereof I have hereunto set my hand and affixed the seal of said court at the Borough of Brooklyn this 29th day of September 1904.

[SEAL.]

JOHN B. BYRNE, *Clerk.*

3620.

STATE OF NEW YORK.

Office of the County Clerk of Westchester County, ss:

I have compared the preceding with the original certified copy of order filed in this office on the 4th day of Oct. 1904, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 18th day of Oct., 1904.

[Seal Westchester County.]

LESLIE SUTHERLAND,
County Clerk of Westchester County.

56 [Endorsed:] Supreme Court—Appellate Division, Second Judicial Department. Wilson R. Hunter vs. Mutual Reserve Life Insurance Company. Certified copy of the Judgment Roll. (Action No. 1).

57 New York Supreme Court, Westchester County.

WILSON R. HUNTER, Plaintiff,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

SIRS: Please take notice that the defendant, the Mutual Reserve Life Insurance Company, in the above entitled action, hereby appeals to the Court of Appeals from the order of the Appellate Division of the Supreme Court of the State of New York in the Second Department, dated the 29th day of September, 1904, and duly entered and filed in the office of the Clerk of the County of Westchester, directing that the plaintiff have judgment against the defendant in the said action for the sum of Ninety-nine hundred and sixty-five dollars (\$9965.), with interest from the 5th day of May, 1902, and costs, and also from the judgment upon said order, dated on the 4th day of October, 1904, and entered on that day, giving judgment in favor of the plaintiff against the defendant in said action for the aggregate sum of eleven thousand four hundred and ninety-seven dollars and ten cents (\$11,497.10), and that the defendant

5—212

appeals from each and every part of said order and judgment respectively.

Dated, New York, October 5th, 1904.

Yours, &c.,

GEO. BURNHAM, JR.,

Attorney for Defendant,

309 Broadway, Manhattan Borough, New York City.

To Leslie Sutherland, Esq., Clerk of the County of Westchester.

To Paul Armitage, Esq., Attorney for Plaintiff, 280 Broadway, Manhattan Borough, New York City.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original notice of appeal filed in this office on the 10th day of October, 1904, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

59 [Endorsed:] N. Y. Supreme Court. Westchester County.

Wilson R. Hunter, Plaintiff, against Mutual Reserve Life Insurance Company, Defendant. (Copy.) Notice of appeal. Geo. Burnham, Jr., Attorney for defendant, Mutual Reserve Building, 309 Broadway, New York. To Paul Armitage, Esq., Attorney for plaintiff, 280 Broadway, New York City.

60 Supreme Court, Appellate Division, Second Judicial Department.

WILSON R. HUNTER, Plaintiff,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Submission of Controversy, upon an Agreed Statement of Facts,
Pursuant to Section 1279 of the Code of Civil Procedure.

Paul Armitage, for the plaintiff.

Frank E. Lawrence (George Burnham, Jr., and Gordon T. Hughes with him on the brief), for the defendant.

HOOVER, J.:

In this submission of controversy upon agreed statement of facts, it appears that the plaintiff is the assignee and owner of five judgments recovered against the defendant in the State of North Carolina, by citizens in that State, in the month of May, 1902. The defendant is a life insurance corporation organized and existing

under the laws of the State of New York. For many years prior to the 18th day of May, 1899, it did a regular insurance business, soliciting insurance, paying claims, and receiving premiums in the State of North Carolina. Chapter 54 of the laws of 1899 of the laws of North Carolina, in effect March 6th, 1899, provided, *inter alia*, that no foreign insurance corporation should do business in

that State "until it shall, by duly executed instrument filed
61 in his office, constitute and appoint the insurance commissioner or his successor, its true and lawful attorney upon whom all lawful process in any action or legal proceeding against it may be served, and therein shall agree that any lawful process against it which may be served upon its said attorney, shall be of the same force and validity as if served upon the company, and the authority thereof shall continue in force irrevocable so long as any liability of the company shall remain outstanding in this commonwealth." On or about the 13th day of April, 1899, the defendant, pursuant to this statute, by a duly executed instrument in writing, filed in his office, constituted and appointed the Insurance Commissioner or his successor its true and lawful attorney "upon whom all lawful process in any action or legal proceeding against it may be served, subject to and in accordance with all the provisions of the laws of the State of North Carolina now in force and such other laws as may hereafter be executed in relation thereto; and said company does hereby expressly agree that any lawful process against it which may be served upon said James R. Young, Insurance Commissioner, or his successor, shall be of the same force and validity as if served on this company and this authority shall continue in force and irrevocable so long as any liability of said company remains outstanding in said state." On the 17th day of May, 1899, the defendant attempted to withdraw the designation and appointment of the Insurance Commissioner theretofore made, and to revoke his authority, and the next day withdrew its agents from the State, closed its offices there, and wrote no more new policies. The actions which resulted in the judgments in the State of North Carolina, assigned to this plaintiff, were commenced by the service of lawful process upon James R. Young, the Insurance Commissioner of the State of North Carolina, after the attempted

62 revocation; and at the time of the service of these processes the defendant had outstanding liabilities in the State of North Carolina on policies it had issued to the citizens of that state. Although it withdrew its agents therefrom, it thereafter continued to collect and receive premiums through the mail, and pay losses in the same way. In addition to this class of business, the record states four particular instances of other business; in one an agent was sent into the state to adjust particular losses; in another it designated a bank within the state to collect premiums upon certain policies, and pay death losses thereon; again it employed an attorney within that state and authorized him to compromise a disputed claim, and fourth a new policy to an old policy holder was issued on the surrender of his first policy. These acts were all of them performed subsequent to the attempted revocation of the

power of attorney. As to the validity of one of the judgments for \$1172.92, the defendant while contending that the courts of North Carolina had no jurisdiction to render any personal judgment against it, makes no attempt to distinguish the facts surrounding the rendition of that judgment from the principles declared by the Court of Appeals in *Woodward v. Mutual Reserve Life Ins. Co.* (176 N. Y. 485), and in any event judgment must be awarded to the plaintiff, the assignee of that judgment, for that amount on the authority of the Woodward case.

As to the remainder of the plaintiff's claim, however the defendant asserts that inasmuch as the suits in North Carolina arose upon four separate contracts of insurance, made by the defendant, one with Davis, a citizen of the State of New Jersey, two with Meinhard, and one with Armitage, citizens of the State of New York, and did not arise out of the facts or circumstances connected with policies solicited by the defendant and written in the State of North Carolina, the judgments of the courts of that state awarding damages, were without jurisdiction and void, and should not support this action. The principal questions presented by this record in reference to the construction of the foregoing enactment of the legislation of the State of North Carolina, and other similar statutes, and by the acts performed thereunder and in respect thereof by the defendant and the rendition of judgments after personal service upon Commissioner Young, have so recently been discussed at length in the Woodward Case, and in *Birch v. Mutual Reserve Life Ins. Co.* (91 App. Div., 384) in this department, that it is unnecessary to discuss those questions here. In the Birch case the policies which gave rise to the action were all executed presumably in reliance upon the provisions of the law of North Carolina requiring the maintenance of an attorney or agent in that state, upon whom service might be made, and it was held that the courts of that state acquired jurisdiction of this defendant by service of process upon the Insurance Commissioner after the attempted revocation. Here, however, the contracts of insurance were made without that state and, although the assignee of the cause of action resided there at the time he brought his actions by service of process upon the Insurance Commissioner, the defendant urges that such service was void and that the attempted revocation of the appointment or designation of him as agent or attorney upon whom process might be served, was sufficient to revoke his authority in that particular, at least in relation to actions brought against it, growing out of policies actually written or contracts actually made in some other state other than that of North Carolina. I cannot give my accord to that view. The Court of Appeals pointed out in the Woodward case that a state might properly describe in terms whatsoever as a condition precedent of the transaction of business by a foreign corporation knocking at its doors for admission. In the case at hand the defendant was not permitted to enter and transact business until it consented to and did designate the Commissioner of Insurance its agent upon whom process might be served, and the designation following the requirements of the statutes

provided that Young or his successor was constituted the true and lawful attorney of the defendant *upon whom all lawful process in any action or legal proceeding against it may be served*, and the defendant expressly further agreed that *any* lawful process against it which might be served upon the commissioner should have the same force and validity as if served upon the Company, and that this authority should continue in force and irrevocable *so long as any liability* of said company remained outstanding in said State. This does not limit the character of liability even to matters arising out of the transaction of insurance business. It does not seek to limit the designation to exclude service of process in actions of negligence, on contracts other than arising out of the insurance business, or real estate transactions. Assuming that the defendant had negligently inflicted injuries upon some citizen of the State of North Carolina in and about the business of maintaining the offices which it operated in that state prior to the 18th day of May, 1899, or, assuming that it had failed to pay an agent in that state his salary, or assuming that at the time of its withdrawal it was liable for the rent of the premises it had occupied for an agency; under the view the defendant wishes us to take, neither the individual who sustained the personal injuries, nor the agent, nor the landlord,

65 might have obtained jurisdiction of the defendant in an action in that state to obtain redress by service of process upon the insurance company made within, say, a week after the cause of action arose, and within that length of time, after the attempted revocation of the designation of the commissioner as attorney. There is nothing in the statute and nothing in the designation pointing to an indication that the designation was limited to any particular class of actions, and without such limitation I am of the opinion that so long as any liability of the defendant remained outstanding in the State of North Carolina, valid service of process against it might be made upon the Insurance Commissioner.

Then again if the construction asked by the defendant should prevail, a citizen and resident of North Carolina would be without power to reach the defendant through the commissioner, where prior to the revocation he had purchased a policy in the State of Virginia, and later removed to the State of North Carolina; so, too, a resident of the latter state would be without a like remedy were he the beneficiary in a policy actually issued and written in the State of Kentucky. There is no limitation in the statute sufficient to exclude such cases from its benefit, nor to exclude the one in hand.

Judgment should therefore be directed for the plaintiff under the stipulation for the sum of nine thousand and nine hundred and sixty-five dollars, with interest thereon from the 5th day of May, 1902, together with costs.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original opinion filed in this office on the 17 day of May, 1906, and do hereby certify the

same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,
County Clerk of Westchester County.

66 Compared.

New York Supreme Court, Westchester County.

WILSON R. HUNTER, Respondent,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Appellant.

Stipulation in Lieu of Clerk's Certificate.

It is hereby stipulated and agreed, that the foregoing are correct copies of the return of the Appellate Division, judgment entered in the Supreme Court thereon, notice of appeal on file in the office of the Clerk of the County of Westchester, and the opinion of the Appellate Division and certification of all the said copies and each of them is hereby expressly waived.

Dated New York, October 22nd, 1904.

GEO. BURNHAM,
Appellant's Attorney.
PAUL ARMITAGE,
Respondent's Attorney.

[In pencil:] Printed Record ends here.

STATE OF NEW YORK,
Office of the County Clerk of Westchester County:

I have compared the preceding with the original Stipulation filed in this office on the 17 day of May, 1906, and do hereby certify the same to be a correct transcript therefrom and the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

County Clerk of Westchester County.

67

Court of Appeals.

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, Held at the Capitol, in the City of Albany, on the 27th Day of February, in the Year of our Lord One Thousand Nine Hundred and Six, Before the Judges of said Court.

Witness The Hon. Edgar M. Cullen, Chief Judge, Presiding.
W. H. SHANKLAND, *Clerk*.

Remittitur, February 28th, 1906.

WILSON R. HUNTER, Resp'd't,
ag't

MUTUAL RESERVE LIFE INSURANCE Co., App'l't.

Be it remembered; That on the 24th day of October, in the year of our Lord one thousand nine hundred and four the Mutual Reserve Life Insurance Company, the appellant in this action, came here into the Court of Appeals, by George Burnham, Jr., its attorney, and filed in the said Court a notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department and from the judgment entered thereon. And Wilson R. Hunter, the respondent in said action, afterwards appeared in said Court of Appeals by Paul
68 Armitage, his attorney. Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Frank R. Lawrence, of counsel for the appellant, and by Mr. Paul Armitage, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment entered upon the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is modified by reducing the same by the amount of \$8792.42, with interest from May 5th, 1902, and as modified affirmed, without costs to either party.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be modified, &c., &c., and as modified affirmed, without costs to either party as aforesaid. And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which

record now remains in the said Supreme Court before the Justices thereof, &c.

W. H. SHANKLAND,

Clerk of the Court of Appeals of the State of New York.

69

Court of Appeals, Clerk's Office.

ALBANY, February 28th, 1906.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the Court of Appeals, with the papers originally filed therein attached thereto.

[Seal of Court of Appeals.]

W. H. SHANKLAND, *Clerk.*

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Remittitur filed in this office on the 17 day of May, 1906, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

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At a Special Term of the Supreme Court, Kings County, held at the County Court House, in said County, on the 28 day of June, 1906.

Present: Hon William D. Dickey, Justice.

WILSON R. HUNTER, Plaintiff,

vs.

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

This cause having been brought on upon the remittitur herein sent down from the Court of Appeals and now filed in this court, by which remittitur it appears that an appeal was taken by the defendant from the judgment entered in the above entitled action, bearing date October 4th, 1904, and entered on said day, which said Judgment adjudged that the plaintiff do recover from the defendant herein the sum of Nine Thousand nine hundred and sixty five (\$9965) Dollars, together with interest from May 5th, 1902, amounting to One thousand four hundred and forty-four and 93/100 (\$1444.93) Dollars and Eighty-seven and 17/100 (\$87.17) Dollars costs and disbursements, amounting in the whole to Eleven Thousand Four Hundred and Ninety-seven and 10/100 (\$11497.10), which said judgment was entered pursuant to an order of the Appel-

late Division of the State of New York, held in and for the second Judicial Department on the 29th day of September, 1904; and it further appearing from said remittitur that the said Court of Appeals has ordered and adjudged that the said judgment of the Appellate Division appealed from be modified by reducing the same by the sum of Eight thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, together with interest thereon from the 5th day of May, 1902, and that the said judgment rendered upon the said order of the Appellate Division, as modified, be affirmed without costs to either party; and that the record and proceedings have been directed by the said Court of Appeals to be remitted to this Court, and this Court directed to enforce the said judgment of the Court of Appeals according to law.

Now therefore on motion of Paul Armitage, attorney for the plaintiff, it is

Ordered and adjudged that the judgment of said Court of Appeals be, and the same hereby is, made the judgment of this Court, and that the judgment in the above entitled action heretofore entered herein on the 4th day of October, 1904, be modified by reducing the same by the sum of Eight thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest thereon from the 5th day of May, 1902, to the date of the said judgment; to wit, October 4th, 1904, which interest amounts to the sum of One thousand Two Hundred and Seventy-four and 90/100 (\$1274.90) Dollars, making a total of Ten Thousand and sixty seven and 32/100 (\$10067.32) Dollars, and that said judgment heretofore entered herein on the 4th day of October, 1904, as so modified and reduced by the sum of Ten Thousand and sixty-seven and 32/100 (\$10067.32) Dollars, be affirmed without costs to either party.

Enter in Westchester County.

WILLIAM D. DICKEY, *J. S. C.*

72 The foregoing order is consented to as to form.

Attorney for Plaintiff.
GEO. BURNHAM, JR.,
Attorney for Defendant.

Notice of settlement is hereby waived.

PAUL ARMITAGE,
Attorney for Plaintiff.

STATE OF NEW YORK.

Office of the County Clerk of Westchester County:

I have compared the preceding with the original order filed in this office on the 2nd day of July, 1903, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,
County Clerk of Westchester County.

73 SIR: Please take notice that the within is a copy of an order this day duly entered in the within-entitled action and filed in the Office of the Clerk of the within-named Court.

Dated New York, July 2, 1906.

GEO. BURNHAM, JR.,
Attorney for Defendant.

To Paul Armitage, Esq., Attorney for plaintiff.

Copy received Jul- 7, 1906.

PAUL ARMITAGE,
Attorney for —.

[Endorsed:] Supreme Court, Westchester County. Wilson R. Hunter, Plaintiff, against Mutual Reserve Life Insurance Company, Defendant. Action No. 1. Order on Remittitur as Resettled with Notice of Entry. Geo. Burnham, Jr., Attorney for Defendant, Mutual Reserve Building, 309 Broadway, New York. To Paul Armitage, Esq., Attorney for plaintiff, 280 Broadway, N. Y.

74 Supreme Court of the State of New York, Westchester County.

WILSON R. HUNTER, Plaintiff,
against
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

Judgment.

A judgment in the above entitled action in favor of the plaintiff having been rendered in this Court on the 4th day of October, 1904, upon an Agreed Statement of Facts, and Submission of Controversy, which said judgment adjudged that the plaintiff do recover from the defendant herein the sum of Nine Thousand Nine Hundred and Sixty-five (\$9965). Dollars, together with interest from May 5th, 1902, amounting to One Thousand Four Hundred and Forty-four and 93/100 (\$1444.93) Dollars and Eighty-seven and 17/100 (\$87.17) Dollars costs and disbursements, amounting in the whole to Eleven Thousand Four Hundred and Ninety-seven and 10/100 (\$11497.10), which said judgment was entered pursuant to an order of the Appellate Division of the State of New York held in and for the Second Judicial Department on the 29th day of December, 1904; and the defendant having appealed to the Court of Appeals, and the said Court of Appeals, having sent its remittitur filed herein on the 28th day of February, 1906, by which it appears that said Court of Appeals has ordered and adjudged that said judgment so rendered

against the defendant herein on the 4th day of October, 1904, be modified by reducing the same by the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42)

75 Dollars, together with interest thereon from May 5th, 1902, to the date of said judgment, i. e., October 4th, 1904, which interest amounts to the sum of One Thousand Two Hundred and Seventy-four and 90/100 (\$1274.90) Dollars; and having further adjudged that the said judgment so rendered, as modified aforesaid, be affirmed without costs to either party; and said Court of Appeals having remitted its judgment to this Court to be enforced according to law, and this Court having by an order entered herein on the — day of June, 1906, ordered that said judgment of said Court of Appeals be made the judgment of this Court, and directing judgment to be entered accordingly,

Now, on motion of Paul Armitage, Attorney for the plaintiff, it is

Ordered and adjudged that the judgment in the above entitled action heretofore entered herein on the 4th day of October, 1904, be modified by reducing the same by the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest thereon from the 5th day of May, 1902, to the date of the said judgment, to wit, October 4th, 1904, which interest amounts to the sum of One Thousand Two Hundred and Seventy-four and 90/100 (\$1274.90) Dollars, making a total of Ten Thousand and Sixty-seven and 32/100 (\$10067.32) Dollars, and that said judgment heretofore entered herein on the 4th day of October, 1904, as so modified and reduced by the sum of Ten Thousand and Sixty-seven and 32/100 (\$10067.32) Dollars, be affirmed without costs to either party.

Dated, July 2, 1906.

LESLIE SUTHERLAND, *Clerk.*

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Order filed in this office on the 2nd day of July 1906, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

76 [Endorsed:] Supreme Court, Westchester County. Wilson R. Hunter, Plaintiff, against Mutual Reserve Life Insurance Company, Defendant. Action No. 1. Judgment with notice of entry. Geo. Burnham, Jr., Attorney for Defendant, Mutual Reserve Building, 309 Broadway, New York. To Paul Armitage, Esq., Attorney for Plaintiff, 280 Broadway, N. Y. Copy received Jul- 7, 1908. Paul Armitage, Attorney for — — —.

SIR: Please Take Notice that the within is a copy of a judgment this day duly entered in the within-entitled action and filed in the Office of the Clerk of the within-named Court.

Dated New York, July 2 1906.

GEO. BURNHAM, JR.,
Attorney for Defendant.

To Paul Armitage, Esq., Attorney for Plaintiff.

77

WILSON R. HUNTER, Respondent,
v.

MUTUAL RESERVE LIFE INSURANCE COMPANY, Appellant.

(Decided February 27th, 1906.)

This is an appeal from a judgment for \$11,497.10, damages and costs, entered in favor of the plaintiff upon an order and direction made by the Appellate Division of the Supreme Court of the second department, upon the submission of a controversy upon an agreed statement of facts.

Frank R. Lawrence, for appellant.
Paul Armitage, for respondent.

HISCOCK, J.:

The defendant is a life insurance company, organized under the laws of this state. The judgment appealed from awarded recovery upon and for the amount of five personal judgments recovered against it in the state of North Carolina. The validity of said latter judgments as a sufficient basis for the present recovery is dependent upon a purported service of process upon the insurance commissioner of North Carolina as a representative for that purpose of the defendant, the latter in no other manner having been served upon or having appeared in said actions. These original judgments allowed recovery on account of five contracts of insurance issued by defendant, in one case to a resident of North Carolina while it was doing business there, and in the remaining cases to residents, respectively, of New York and New Jersey, who, long after defendant had attempted to withdraw from business in North Carolina, as hereinafter stated, assigned their claims to residents of said state. It is conceded by appellant that the judgment appealed from should be affirmed so far as it allows recovery upon the judgment under the North Carolina policy. But it is claimed that as to the other purported judgments the courts of the latter state did not acquire jurisdiction by the attempted service of process, and that as to them the judgment before us should be reversed.

We think that the appellant's contention is well founded.

Some of the facts now presented to us and of the principles applicable thereto were fully considered by this court in *Woodward v. Mutual Reserve Life Ins. Co.* (178 N. Y. 485), and it will only be necessary now to so far state the facts presented as may be necessary to make plain the reason for distinguishing this case from that.

For several years before March 6, 1899, the defendant had been engaged in transacting its life insurance business in North Carolina under provision for service of process upon a local representative for that purpose. Upon the date mentioned the legislature of that state adopted a statute known as the Willard Law, which created an insurance department and provided that no foreign insurance company should be admitted and authorized to do business until it had complied with certain conditions. Among these was one to the effect that it should "by a duly executed instrument constitute and appoint the insurance commissioner, or his successor, its true and lawful attorney upon whom all lawful process in any action or legal proceedings against it might (may) be served, and therein should (shall) agree that any lawful process against it which may be served upon its said attorney should (shall) be of the same force and validity as if served on the company, and the authority thereof should (shall) continue in force irrevocable so long as any liability of the company remains outstanding in this commonwealth."

79 The defendant duly executed and filed an instrument in accordance with the provisions of said act and continued for a time to transact business.

Upon February 10, 1899, the same legislature had adopted a statute known as the Craig Act, which, in substance, provided that any foreign insurance company desiring to transact business in the state of North Carolina after June first then ensuing must become a domestic corporation of said state, and attaching penalties to any attempt to transact business in violation of said provisions.

May 17, 1899, defendant's board of directors adopted a formal resolution referring to the Craig Act and stating its determination not to comply therewith but instead to withdraw from the transaction of business in said state, and declaring that the appointment of the insurance commissioner as an attorney upon whom process might be served be "cancelled, revoked and annulled." Upon May 20th duly certified copies of this resolution were filed with and in the office of the insurance commissioner. Upon May 18, 1899, the defendant did withdraw all of its agents from the state of North Carolina, and since that date has had no agent therein, premiums upon policies theretofore issued by it to residents of said state being remitted to it by mail at its home office in New York city where the policies and premiums were payable, and losses upon policies issued by it being paid by checks from said office. Outside of this the defendant does not appear to have transacted any business whatever in the state since its withdrawal save in four specific instances,

80 two of them occurring a considerable period before and two a considerable period after the purported institution against it in the foreign state of the suits in question. Without going into the details of these transactions, it may be briefly stated that three of them involved the settlement of losses under or re-adjustment of policies issued to residents of North Carolina, while the defendant was regularly transacting business there, and in the fourth case a special adjuster appointed to settle a claim with a

supposed resident of Washington followed him for such purpose into the state of North Carolina whither he had removed.

More than two years after its above-mentioned withdrawal from, and revocation of power of attorney in, North Carolina, residents of New York and New Jersey made assignment of alleged claims under policies there issued to them to residents of North Carolina and upon them four of the original judgments in question were secured through a purported service of process under the power of attorney already stated.

Defendant, conceding its liability upon the judgment upon the North Carolina policy, we need spend no considerable time in reviewing and restating the decision of this court in the Woodward case, whereby it was in effect held that a stipulation made by a foreign insurance company as a condition of doing business in North Carolina that process might be served in its behalf upon some official as long as there might be any outstanding liability upon its part under any contract of insurance, is an agreement for the benefit of and enforceable by a holder of a policy issued to him in that state which could not be subsequently canceled or evaded by the insurance company so long as the liability in behalf of such policyholder continued. The only question which we need discuss is whether the principles of that case, or any others invoked by the present plaintiff, prevented defendant from so canceling and revoking its power of attorney to the superintendent of insurance under the circumstances disclosed as to bar service upon him as its representative in suits upon claims contracted with persons residing outside of the state of North Carolina, and in no way belonging or transferred to a resident of said state until after the attempted revocation.

The learned counsel for the plaintiff largely bases his contention that defendant did not escape service and jurisdiction in North Carolina upon two propositions. He urges, in the first place, that it did not, as it claimed to, discontinue transacting business there and that for that reason its attempted revocation and withdrawal from the state was ineffective. And, secondly, he insists that the strict letter of its power of attorney to the insurance commissioner for service of process provides that such authority "shall continue in force irrevocable so long as any liability of the company remains outstanding in said (this) commonwealth," and that at the time purported service was made there were existing liabilities outstanding.

It may be assumed at once that if defendant upon a fair construction of language and of its acts did continue generally to transact and carry on the business of insurance in North Carolina after its purported revocation of its power of attorney and withdrawal from such state, the latter should be held ineffectual to prevent a continuance of the authority of the insurance official to receive service of a summons. The authorization by the company of service upon said official was a condition of its transacting business in said state, and so long as such transaction of business continued the company should not be allowed to escape the consequences of its agreement by any deceptive or apparent withdrawal. We do not;

however, think that such was the true character of its acts. The Craig Act, to which reference has already been made, by its provision excluded defendant from the transaction of business unless it was willing to become a domestic corporation. It is urged that the Willard Act, to which we have also referred, was passed subsequently and was so inconsistent with the former act as to repeal its prohibitory and penalizing provisions. We scarcely agree with this argument. We think that there was room for the provisions of both statutes. The courts of the state where they were passed in effect have so held, which certainly should be a matter of considerable weight with us in this discussion. (*Debnan v. Telephone Co.*, 126 N. C. 831; *Layden v. Knights of Pythias*, 128 N. C. 546).

But whether this is so or not, the defendant apparently in good faith did regard the provisions of the Craig Act as driving it from the state, in the absence of its willingness to be incorporated as a domestic corporation, and its acts then and thereafter performed indicate an intention actually and in good faith to cease doing business there, and to our minds the facts agreed upon do not show any subsequent modification of this intention. It has already issued policies and contracted liabilities in the state which could not be ignored. It dealt with these liabilities so far as it could from its office in New York and the specific acts which are detailed in the submission arose in connection with the settlement and treatment of old liabilities and old business. We do not think that there was any such continuation of an ordinary, substantial and active insurance business as would be necessary to keep alive the power of attorney within plaintiff's contention upon this point. (*Knights Templars' Indemnity Co. v. Jarmen*, 187 U. S. 197, 204; *Frawley v. Penn. Casualty Co.*, 124, Fed. Rep. 259; *Doe v. Springfield Boiler Co.*, 104 Fed. Rep. 684.)

We, therefore, pass to the consideration of plaintiff's second contention based upon the wording of the power of attorney. In so doing and in construing this instrument and determining whether defendant might revoke it and escape from its consequences as to the majority of the judgments involved in this action, we should keep in mind the policy which led to the adoption of the statute under which it was executed. This policy, briefly stated, involved and voiced the determination upon the part of the state that it would not allow a foreign insurance company to exercise the privilege of doing business within its limits without securing to its citizens who might there be dealt with, an arrangement by which they might institute actions and enforce their contracts and policies at home and without being driven into some foreign state where the company might have its origin and principal place of business.

Statutes requiring the execution of some such agreement by foreign corporations as is invoked against the defendant here, have always been regarded as designed for the protection of the citizens of the state enacting the legislation and who might acquire rights under contracts executed with them or for their benefit while they were such citizens. Such was the underlying principle and view which led to the decisions in the Woodward

case in *La Fayette Ins. Co. v. French* (18 Howard (U. S.) 404) in *Conn. Mut. Life Ins. Co. v. Spratley* (172 U. S. 602) and in *St. Clair v. Cox* (106 U. S. 350).

It would be quite beyond the spirit of those decisions to hold, and we cannot believe that it was the further policy of such legislation to create and perpetuate a local forum to which under guise of an assignment to some resident, non-residents of far distant states might flock for the purpose of instituting litigation upon contracts issued to them at their homes, against a corporation there readily subject to service and which long before had attempted in good faith to withdraw from the jurisdiction thus hunted out.

Holding this view, we are not willing to decide that defendant's power of attorney was irrevocable as against the four foreign claims upon which recovery was had in North Carolina. It is true that, as the statute required, said power of attorney upon its face was irrevocable so long as any liability of the company should remain outstanding in said state. * But it is well settled that a power of attorney, although by its literal terms irrevocable, may be revoked unless some interest or right founded or created upon the faith thereof required its perpetuation and continuance. (*Hunt v. Rousmanier's Adm.*, 8 Wheaton, 174; *Knapp v. Alvord*, 10 Paige, 205; *Story on Agency* (3rd ed.), sec. 476.)

85 The citizens of North Carolina who had taken contracts from the defendant while it was there doing business in reliance upon this power of attorney which had been executed for their protection under the requirements of the statute were entitled to have it remain unrevoked as provided by its terms. As we have already seen, they are to be regarded as having made their contracts upon the faith of it, and as against them defendant could not escape from its consequences.

But the plaintiffs in the North Carolina actions, who secured their claims from non-resident assignors, occupied no such position. These claims under contracts executed in other states cannot by any possibility be regarded as having been contracted or acquired in reliance upon this provision for service within the state of North Carolina. The assignees, who saw fit to embark upon the acquisition of foreign claims, did not do so in innocent reliance upon the right to bring such suits in their own state, for long before they began the accumulation of claims against the defendant it had formally, and, as we believe, in good faith, withdrawn from the state where they lived and given formal notice of its revocation of the power of attorney. They did not acquire any such right to enforce jurisdiction in the courts of their own state against the defendant as makes it in any way inequitable or unjust that the power of attorney should be revoked. They are not of the class for whose protection it was originally executed. They have not acquired any rights upon the faith of it. The contracts which they seek to enforce were not secured by
86 defendant from those who expected protection under it. We not only think that it is legal and equitable that defendant's revocation should be effective as against these parties, but that it would be extremely inequitable to hold the reverse.

The learned counsel for the plaintiff has called to our attention

many cases which he claims are opposed to the views expressed. While some of them may contain isolated expressions which seem to sustain his view, we think that all of them which ought to be at all controlling upon this court may be clearly distinguished from the case at bar, and we shall only refer briefly to a few of them.

In *Connecticut Mut. Life Ins. Co. v. Spratley* (172 U. S. 602) it appeared that plaintiff in error had been engaged for many years in transacting a general insurance business in Tennessee under a statute which, amongst other things, provided that any corporation that had any transaction with persons or concerning any property situated in the state through any agency whatever acting for it within the state should be held to be doing business within the meaning of the act, and also that process might be served upon any agent of the corporation found within the county where the suit was brought no matter what character of agent such person might be. There after, having issued many policies, the corporation assumed to withdraw from the state by recalling its agents and refusing to take new risks or issue new policies within the state. At this time many policies were outstanding upon which it continued to collect premiums through an agent residing in another state. Action was brought in the courts of Tennessee upon policies issued for the benefit of resi-

87 dents of that state while the company was regularly engaged in doing business there and before its attempt to withdraw, and service in said action was made upon a conceded representative of the company who had come into the state for the purpose of adjusting and settling losses under said policies. It was held that under the circumstances of that case the company was doing business within the state and that service was properly made upon it in the manner indicated. It will be at once observed that independent of the statutory provision defining what should be held to constitute doing business within the meaning of the act under which plaintiff in error operated in the state of Tennessee, this decision was entirely in line with the principle adjudicated by this court in the *Woodward* case. The rights involved were those of a policyholder resident in the state who had there contracted with the company while it was transacting business in that state under a statute which coupled with permission certain conditions for the service of process, and the principle upheld was that the company could not defeat the rights of the policyholder and by an attempted withdrawal from the state force him into some foreign jurisdiction.

Mutual Reserve Fund Life Association v. Phelps (190 U. S. 147) was based upon the same principle of upholding in favor of a citizen of Kentucky who had received from the plaintiff in error a policy of insurance while it was regularly transacting business in that state, the right to institute action by service of process upon the insurance commissioner in accordance with the provisions of a statute which permitted the company to transact business in that state under conditions allowing such service of process, notwithstanding the
88 company after issuing the policy had attempted to withdraw from the state and cancel the right of service upon the commissioner.

In *Birch v. Mutual Reserve Life Ins. Co.* (91 App. Div. 384,

affirmed without opinion, 181 N. Y. 583) judgment was recovered in the state of North Carolina upon various contracts of life insurance executed in that state while the defendant was regularly engaged in transacting its life insurance business there. Action was commenced by service of process upon the insurance commissioner, and it was held that such service was good, although the defendant had attempted to withdraw from the state and revoke its power of attorney before service was made.

We see nothing in any of these cases which impairs the force of the conclusions reached by us.

The judgment appealed from should be modified by reducing the same by the amount of \$8,792.42, with interest thereon from May 5th, 1902, and as so modified should be affirmed, without costs to either party.

Cullen, Ch. J., O'Brien, Haight, Vann and Werner, JJ., concur; Willard Bartlett, J., not sitting.

Judgment accordingly.

89 [Endorsed:] Hunter vs. M. R. Co. Opinion of the Court of Appeals.

90 Court of Appeals of the State of New York.

WILSON R. HUNTER, Plaintiff,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.

To the Hon. Edgar M. Cullen, Chief Justice of the Court of Appeals of the State of New York:

The petition of Wilson R. Hunter, respectfully shows:

That heretofore, and upon the 17th day of March, 1904, as permitted and required by the terms and provisions of Sections 1279 and 1280 of the Code of Civil Procedure of the State of New York, there were duly filed in the office of the Clerk of the County of New York, in said State, the Agreed Statement of Facts and Submission of Controversy herein dated February 6th, 1904.

That, as will more fully appear by reference to said agreed statement of facts and submission of controversy, that the defendant, the Mutual Reserve Fund Life Association, was at all times prior to April 17th, 1902, a corporation organized for transacting the business of life insurance upon the co-operative or assessment plan, under the laws of the State of New York originally incorporated on February 9th, 1881, and in April 17th, 1902, it amended its Charter under the laws of the State of New York, and re-incorporated as a mutual life insurance company under the name of the Mutual Reserve Life Insurance Company. That the plaintiff sued to recover from the defendant, above named, a personal money judgment for the

91 sum of Nine Thousand nine hundred and sixty-five and 37/100 (\$9965.37), with interest from May 5th, 1902, being the amount of five certain judgments which had been received in

May, 1902, in the Superior Court for the County of Craven, in the State of North Carolina, against the defendant, formerly denominated the Mutual Reserve Fund Life Association, as follows:

1st. One judgment in favor of Rufus W. Hicks, a citizen and resident of North Carolina, for One Thousand one hundred and fifty-three and 97/100 (\$1153.97) Dollars, with interest thereon from May 5th, 1902, together with Eighteen and 95/100 (\$18.95) Dollars, costs.

2nd. Four separate judgments each in favor of Enoch Wadsworth, a citizen and resident of North Carolina, amounting in all, with costs, to the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest thereon from May 5th, 1902.

That all of said five judgments so recovered in the Superior Court of North Carolina, were before this action duly assigned to and became the property of the plaintiff, Wilson R. Hunter.

That said five judgments were recovered in the following manner:

Upon January 20, 1902, five summonses were issued out of said Superior Court for the County of Craven, in the State of North Carolina, one, at the instance of said Rufus W. Hicks, and four at the instance of Enoch Wadsworth, commanding the Sheriff of Wake County, in said State of North Carolina, to summon the Mutual Reserve Fund Life Association to appear at a term of said Superior Court for the County of Craven to be held on the 10th day of February, 1902, and answer the complaints of said Hicks and Wadsworth deposited in the office of the Clerk of said Superior

92 Court, and that in said summonses notice was given that in case the defendant should fail to answer such complaints respectively, the plaintiffs therein named, i. e., said Hicks and said Wadsworth would apply to the said Superior Court for the relief demanded therein.

That on January 21, 1902, the said Sheriff of Wake County in the State of North Carolina, duly served the said five summonses on James R. Young, then insurance commissioner of the State of North Carolina, on behalf of the defendant, and on the same day, said James R. Young, as such Insurance Commissioner, duly mailed copies of said five summonses to the defendant in New York City, in the State of New York, which in due course of mail were received.

That the service of said process in said five actions in said Superior Court of North Carolina on the said James R. Young, Insurance Commissioner, on behalf of the defendant, was, pursuant to the provisions of a statute of the State of North Carolina adopted and in force March 6th, 1899, by the terms of which all insurance corporations organized under the laws of states other than North Carolina, prohibited from doing business in the State of North Carolina until, among other things, such company had by a duly executed instrument filed in the office of the Insurance Commissioner of said State appointed such Insurance Commissioner its true and lawful attorney, upon whom all lawful process in any action or proceedings against it may be served with the same force and validity as if served on the Company, the authority thereof to continue in force irrevoc-

cable so long as any liability of the Company remained outstanding in said commonwealth. And pursuant to the provisions of which statute the defendant Company, on the 13th day of April, 1899, filed in the office of such James R. Young, a power of attorney, authorizing him to receive process in all actions in said State, such authority to continue irrevocable, so long as it had outstanding liabilities in the State.

That it further appeared in said agreed statement of facts, that at the service of said five summons- as aforesaid, the defendant Company had many outstanding liabilities in the State of North Carolina, and had numerous insurance policies on the lives of citizens of that State in which it was, at that time, collecting premiums and assessments and adjusting losses thereon, as they accrued.

That no answer or appearance on behalf of defendant having been interposed in said five actions so commenced by Hicks and by Wadsworth in the said Superior Court, judgments by default were, on May 5th, 1902, at a Stated Term of said Superior Court, entered in said actions; (1) One judgment in favor of said Hicks for One thousand One hundred and fifty-three and 97/100 (\$1153.97) Dollars, with Eighteen and 95/100 (\$18.95) Dollars costs; and, (2), four judgments in favor of said Wadsworth amounting in all to Eight Thousand Seven hundred and ninety-two and 42/100 (\$8792.42) Dollars.

Thereafter the plaintiff here, Wilson R. Hunter, became the owner of said five judgments, and brought this present action in the Supreme Court of New York State to recover from the defendant the amount thereof.

That thereafter, at a term of the Appellate Division of the Supreme Court, in and for the Second Judicial Department, held on the 29th day of September, 1904, it was ordered and adjudged that the plaintiff have judgment against the defendant for the full amount of said five (5) judgments with interest and costs, which order was duly entered in the office of the Clerk of said Appellate Division.

That thereafter, and on October 4th, 1904, pursuant to said order, there was entered in the Clerk's Office of the County of Westchester, in the State of New York, a judgment of the Supreme Court in favor of the plaintiff, and against the defendant for the sum of Nine thousand nine hundred and sixty-five (\$9965.) Dollars, being the amount of said five judgments so sued upon, together with interest from May 5th, 1902, amounting to One thousand four hundred and forty-four and 93/100 (\$1444.93) Dollars, and costs and disbursements Eighty-seven and 17/100 (\$87.17) Dollars, amounting in all to Eleven Thousand Four hundred and ninety-seven and 10/100 (\$11497.10) Dollars.

That thereafter and upon October 5th, 1904, the defendant duly served on the plaintiff and the Clerk of said County of Westchester his notice of appeal to the Court of Appeals of the State of New York from said order of the Appellate Division and said judgment entered upon said order, and duly perfected his said appeal to the said Court of Appeals.

That, thereafter, and upon February 28th, 1906, the Court of Appeals, by its decision and judgment herein, modified the said judgment of said the Appellate Division of the Supreme Court, by reducing the same by the amount of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest from May 5th, 1902, and directed, as modified, said judgment be affirmed without costs to either party.

That upon February 28th, 1906, the said Court of Appeals sent to the Supreme Court of New York its remittitur remitting the judgment of said Court of Appeals to said Supreme Court to be enforced according to law.

That upon June 28th, 1906, said Supreme Court of New York ordered that the judgment of said Court of Appeals be made the judgment of said Supreme Court, and directed judgment to
95 be entered accordingly.

That upon July 2nd, 1906, final judgment was entered by the said Supreme Court reducing the said judgment heretofore recovered herein by the plaintiff against the defendant on October 4th, 1904, by the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest from May 5th, 1902, to the date of said judgment, amounting to the sum of One thousand two hundred and seventy-four and 90/100 (\$1274.90) Dollars, a total of Ten thousand sixty-seven and 32/100 (\$10037.32) Dollars, and adjudging that said judgment, as so modified, be affirmed.

That the said sum of Eight Thousand Seven hundred and ninety-two and 42/100 (\$8792.42) Dollars, with interest from May 5th, 1902, by which the Court of Appeals so reduced plaintiff's judgment recovered against defendant on October 4th, 1904, was the amount of the four judgments recovered by said Wadsworth against the defendant in the Superior Court of North Carolina; that the ground on which said Court of Appeals reduced the said judgment recovered by this plaintiff by that amount, was that the said causes of action so sued upon by said Wadsworth were based on contracts and policies of insurance made with citizens of States other than that of North Carolina; that the aforesaid power of attorney to said Insurance Commissioner of North Carolina was revocable as to such policies, and had been revoked by the defendant before such service, hence the said Superior Court of North Carolina had no jurisdiction to render such judgments.

That upon the hearing and arguments of said submitted controversy before said Appellate Division, and before said Court of Appeals, your petitioner specially set up and claimed that all of said judgments and particularly said four judgments of the
96 Superior Court of North Carolina in *in* favor of Wadsworth were valid and binding on defendant and entitled to full faith and credit in the Courts of New York State as judicial proceedings of the State of North Carolina, and specially set up and invoked the protection and benefit of Section I of Article IV of the Constitution of the United States, and his rights and privileges thereunder.

That the judgment of said Court of Appeals of the State of New York reducing the petitioner's judgment heretofore entered herein on the 4th day of October, 1904, by the amount of said four (4) judgments so recovered in the Superior Court of North Carolina in favor of said Enoch Wadsworth for the sum of Eight Thousand Seven Hundred and Ninety-two and 42/100 (\$8792.42) Dollars, with interest from May 5th, 1902, and the final judgment of said Supreme Court, entered in accordance therewith were against the said rights, privileges and immunities of the petitioner under Section I of Article IV of the Constitution of the United States, it being adjudged by said Court of Appeals and by said Supreme Court that the said four (4) judgments so recovered by said Enoch Wadsworth in said Superior Court of North Carolina were not valid judgments and said court of Appeals and said Supreme Court have refused to give full faith and credit due under the constitution of the United States to said four (4) judgments of the Superior Court of North Carolina.

That a decision against said rights, privileges and immunities of the petitioner under said Section I of Article IV of the Constitution of the United States was necessary to the said judgments rendered in said Court of Appeals and said Supreme Court of the State of New York.

That by the said judgment of the Court and said final judgment of the Supreme Court of the State of New York, entered in accordance therewith, certain errors were committed to the
97 injury and prejudice of the petitioner, all of which will more in detail appear from the assignment of errors presented with this petition.

That the Court of Appeals of the State of New York is the highest Court of said State in which a decision could be had in this suit.

Wherefore your petitioner prays that a writ of error from the Supreme Court of the United States to the Supreme Court of the State of New York, and the justices thereof, be allowed for the examination and correction of errors so complained of; that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States; that a citation be granted and signed; that the bond herewith presented be approved; that the errors complained of may be reviewed by the Supreme Court of the United States, and that the judgment aforesaid of the Court of Appeals of the State of New York, and the said judgment of the Supreme Court of the State of New York, entered upon the said remittitur from the said Court of Appeals, be reversed; in so far as the same modifies the former judgment entered herein on October 4th, 1904, by reducing the same the sum of \$8792.42 with interest from May 5th, 1902.

Dated, June 29, 1908.

_____, *Petitioner*,
By PAUL ARMITAGE, *Attorney*.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original petition for Writ of Errors filed in this office on the 1st day of July, 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

98 [Endorsed:] Court of Appeals of the State of New York.
Wilson R. Hunter, Plaintiff in Error, against Mutual Reserve Life Insurance Company, Defendant in Error. Petition for writ of error. Paul Armitage, Att'y for Pl'ff in Error. Wilson R. Hunter, 280 Broadway, Manhattan Borough, New York City. Read on Application for Writ of Error, June 29, 1908. Edgar M. Cullen, Chief Judge of the Court of Appeals.

99 The Court of Appeals of the State of New York.

WILSON R. HUNTER, Plaintiff in Error,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant in Error.

Now comes, the said Wilson R. Hunter, Plaintiff in Error, and in connection with his petition for a Writ of Error from the Supreme Court of the United States herein, respectfully submits that in the record and proceedings decision and final judgment herein, there is manifest error in the decision and judgment of the Court of Appeals in the State of New York, and in the judgment of the Supreme Court of the State of New York, entered on the 2nd day of July, 1906, upon the remittitur in accordance therewith in this, to wit:

First. It was error for the said Court of Appeals to adjudge and decide that the four separate judgments against the defendant in error in favor of Enoch Wadsworth, a citizen and resident of North Carolina, recovered in the Superior Court of North Carolina, amounting in all with costs to the sum of Eight thousand, Seven hundred Ninety-two and 42/100 (\$8,792.42) Dollars, with interest from May 5th, 1902, were not valid judgments and binding on the defendant and were not entitled to full faith and credit in the
100 Courts of New York as Judicial proceedings of the State of North Carolina.

Second. That it was error to adjudge and decide that the said four judgments recovered by one, Enoch Wadsworth against the defendant in the Superior Court of North Carolina, amounting in all to Eight thousand, Seven hundred Ninety-two and 42/100 (\$8,792.42) Dollars, were not entitled to full faith and credit, and the failure of the said Court of Appeals to award said judgments

full faith and credit in the Courts of the State of New York is contrary to the provisions of Section 1 of Article 4 of the Constitution of the United States.

Third. The final judgment of the said Supreme Court entered in accordance with the judgment of the said Court of appeals reducing the plaintiff in error's judgment theretofore recovered by the amount of the said four judgments so recovered in the Superior Court of North Carolina in favor of the said Enoch Wadsworth for the sum of Eight thousand, Seven hundred Ninety-two and 42/100 (\$8,792.42) Dollars, with interest from May 5th, 1902, is erroneous as against the rights, privileges and immunities of the plaintiff in error under Section 1 of Article 4 of the Constitution of the United States, it being adjudged by the said Court of Appeals and the said Supreme Court that the said four judgments were not valid judgments and said Court of Appeals and said Supreme Court have erroneously refused to give full faith and credit due the same.

Fourth. It was error to adjudge and decide that the said four personal judgments rendered by the Superior Court of the State of North Carolina in favor of Enoch Wadsworth, amounting in all to the sum of Eight thousand, Seven hundred Ninety-two and 101 42/100 (\$8,792.42) Dollars, with interest from May 5th, 1902, were not rendered upon due process of law and that the said Superior Court of North Carolina had not acquired personal jurisdiction over the defendant in error.

Fifth. The Court of Appeals of the State of New York, which is the highest Court of the said State in which a decision in this case could be had, rendered a decision against the rights, privileges and immunity of the plaintiff in error specially set up and claimed by the plaintiff in error under Section 1 of Article 4 of the Constitution of the United States, and such decision was necessary to the judgment rendered by the said Court of Appeals, which judgment was thereafter made on the 2nd day of July, 1906, the judgment of the Supreme Court of said State.

Sixth. It was error to adjudge and decide that the attempted revocation on or about May 17th, 1899, by the defendant in error of the power of attorney theretofore executed by it to James R. Young, Insurance Commissioner, did, as against the plaintiff, Enoch Wadsworth in the said four judgments recovered in the Superior Court of North Carolina, terminate all authority of said Insurance Commissioner to receive process in the said suit brought by the said Enoch Wadsworth.

Seventh. It was error to adjudge and decide that the revocation on or about May 17th, 1899, by the defendant in error of the power of attorney theretofore executed by it to James R. Young, Insurance Commissioner, and the attempted withdrawal at or about that date of the defendant in error from the transaction of business in the

State of North Carolina, did terminate all authority of said
102 Insurance Commissioner to receive service of process in the four suits brought on or about January 20th, 1902, by the said Enoch Wadsworth in the Superior Court of North Carolina, in which judgment was thereafter rendered in favor of the said Enoch

Wadsworth against the defendant in error in the sum of Eight thousand, Seven hundred Ninety-two and 42/100 (\$8,792.42) Dollars.

Eighth. It was error to adjudge and decree that on January 21st, 1902, the date when the Sheriff of Wake County, in the State of North Carolina, duly served the said summonses in the said four suits brought by Enoch Wadsworth against James R. Young, Insurance Commissioner of the State of North Carolina, the defendant in error was not then doing business in the State of North Carolina and subject to the jurisdiction of its Courts and of the said Superior Court.

Ninth. That it was error to adjudge and decree that subsequent to May 17th, 1899, and continuously until after May, 1902, the defendant in error was not doing business within the State of North Carolina and subject to the jurisdiction of its Courts and especially the Superior Court of the State.

The plaintiff in error prays that the Supreme Court of the United States will reverse the judgment aforesaid of the Court of Appeals of the State of New York and the said judgment of the Supreme Court of the State of New York entered upon the remittitur in accordance therewith, in so far as the same modifies the former judgment, entered herein by reducing the same \$8792.42 with interest as aforesaid.

Dated N. Y., June 23rd, 1908.

WILSON R. HUNTER,
By PAUL ARMITAGE,
Attorney.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Assignment of Errors filed in this office on the 1st day of July, 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24th day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,
County Clerk of Westchester County.

103 [Endorsed:] Court of Appeals of the State of New York.
Wilson R. Hunter, Plaintiff in Error, against Mutual Reserve Life Insurance Company, Defendant in Error. Assignment of Errors. Paul Armitage, Att'y for Pl'ff in Error, Wilson R. Hunter, 280 Broadway, Manhattan Borough, New York City. Read on application for a Writ of Error, June 29, 1908. Edgar M. Cullen, Chief Judge Ct. of Appeals.

104

Supreme Court, Westchester County.

WILSON R. HUNTER, Plaintiff in Error,
against

MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant in Error.

Know all men by these presents: That the National Surety Company, a Corporation organized and existing under the Laws of the State of New York, having an office and principal place of business at No. 115 Broadway, in the Borough of Manhattan, City of New York, is held and firmly bound unto the above named Mutual Reserve Life Insurance Company, a domestic Corporation, in the sum of Five hundred (\$500.) Dollars, to be paid to the said Mutual Reserve Life Insurance Company, its successors or assigns, to which payment well and truly to be made the said National Surety Company binds itself, its successors and assigns firmly by these presents.

Signed and sealed with its Corporate seal this 27th day of June, 1908.

Whereas, the above named Wilson R. Hunter has prosecuted an appeal by Writ of Error to the United States Supreme Court to reverse a certain judgment rendered in the above entitled action by the Court of Appeals of the State of New York, and the judgment rendered by the Supreme Court of the State of New York upon remittitur therefrom on the 2nd day of July, 1906, whereby it
105 was adjudged that a judgment theretofore recovered by the plaintiff be modified by reducing the same by the sum of Eight thousand Seven hundred Ninety-two and 42/100 (\$8792.42), with interest from May 5th, 1902, and in accordance therewith.

Now, therefore, the condition of the above obligation is such, That if the said Wilson R. Hunter shall prosecute his Writ of Error to effect, and answer all damages and costs if it fail to make its said plea good, then the above obligation to be void; else to remain in full force and virtue.

NATIONAL SURETY COMPANY,
By ARTHUR P. WEST,
Res. Vice-President.

Attest:

[L. s.] WM. A. THOMPSON,
Assistant Secretary.

106

STATE OF NEW YORK,
County of New York, ss:

On this 27th day of June 1908, before me personally appeared Arthur P. West, Res. Vice-President of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the County of New York; that he is the Res. Vice-President of the National Surety Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said Company; that the seal affixed to the within instrument is such corporate seal; that it was

affixed by order of the Board of Directors of said Company, and that he signed said instrument as Res. Vice-President of said Company by like authority; and that the liabilities of said Company do not exceed its assets, as ascertained in the manner provided in Section 3, Chapter 720, of New York Session laws of 1893. And the said Arthur P. West further said that he is acquainted with Wm. A. Thompson and knows him to be the Ass't Secretary of said Company; that the signature of the said Wm. A. Thompson subscribed to the said instrument is in the genuine handwriting of the said Wm. A. Thompson and was thereto subscribed by the like order of the said Board of Directors and in the presence of him, the said Res. Vice-President.

WM. F. GAYNOR,
Notary Public for County of Kings.

Certificate filed in New York, Queens, Richmond and Westchester Counties.

Copy of By-Law.

Be it Remembered, That at a regular meeting of the Board of Directors of the National Surety Company, duly called and held on the first day of May, 1906, a quorum being present, the following By-Law was adopted:

"ARTICLE XIII. SEC. 1. *Signatures Required:* All bonds, recognizances, contracts of indemnity, policies of insurance and all other writings obligatory in the nature thereof, shall be signed by the President, the Vice President, Second Vice President, Third Vice President, or Fourth Vice President, a Resident Vice President, or Attorney-in-fact, and except when signed by an Attorney-in-fact, shall have the seal of the Company affixed thereto duly attested by the Secretary, an Assistant Secretary, or Resident Assistant Secretary. The Vice President, Second Vice President, Third Vice President, Fourth Vice President and Resident Vice Presidents shall each have authority to sign such instruments, whether the President be absent, or incapacitated or not; and the Assistant Secretaries and Resident Assistant Secretaries shall each have authority to seal and attest such instruments whether the Secretary be absent, or incapacitated or not. All such instruments executed as herein provided shall be as binding upon the Company as if the same were signed by the President, and duly sealed and attested by the Secretary."

STATE OF NEW YORK,
County of New York, ss:

I, Wm. A. Thompson, Ass't Secretary of the National Surety Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original By-Law.

Given under my hand and the seal of the Company in the County of New York, this 27th day of June, 1908.

[L. s.]

WM. A. THOMPSON,
Asst Secretary.

Approved June 29th, 1908.

[L. s.]

EDGAR M. CULLEN,
Chief Judge Court of Appeals.

STATE OF NEW YORK.

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Bond filed in this office on the 1st day of July 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 24 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,
County Clerk of Westchester County.

107 UNITED STATES OF AMERICA, *vs.*:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of New York upon a remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Wilson R. Hunter, plaintiff in error and the Mutual Reserve Life Insurance Company, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treatise, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty,

108 statute, or commission; a manifest error hath happened to the great damage of the said Wilson R. Hunter, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United

States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of June, in the year of our Lord one thousand nine hundred and eight.

JOHN A. SHIELDS,

*Clerk of the Circuit Court of the United States of America
for the Southern District of New York, in the Second
Circuit.*

The foregoing writ is hereby allowed by

EDGAR M. CULLEN,

*Chief Judge of the Court of Appeals
of the State of New York.*

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Writ of Error filed in this office on the 1 day of July 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 1 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

109 UNITED STATES OF AMERICA, ss:

To Mutual Reserve Life Insurance Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the State of New York, in and for the County of Westchester, wherein Wilson R. Hunter, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edgar M. Cullen, Chief Judge of the Court of Appeals of the State of New York, this 29th day of June, in the year of our Lord one thousand nine hundred and eight.

EDGAR M. CULLEN,

*Chief Judge of the Court of Appeals
of the State of New York.*

Allowed June 29, 1908.

STATE OF NEW YORK,

Office of the County Clerk of Westchester County:

I have compared the preceding with the original Citation filed in this office on the 1 day of July 1908, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 1 day of July, 1908.

[Seal Westchester County.]

FRANK M. BUCK,

County Clerk of Westchester County.

[Endorsed:] Hunter vs. Mutual Reserve.

110 STATE OF NEW YORK,

County of Westchester, ss:

Clerk's Office of the Supreme Court of the State of New York for the County of Westchester.

I, Frank M. Buck, Clerk of the County of Westchester and of the Supreme Court of the State of New York, for the said County of Westchester, by virtue of the annexed Writ of Error, which was served upon me on the first day of July, 1908, and in obedience thereto, do hereby certify that the foregoing is a true and complete transcript of the record and proceedings had in said Court in the suit of Wilson R. Hunter vs. Mutual Reserve Life Insurance Company, mentioned in said Writ of Error as the same remains of record and on file in my office and that annexed hereto is the petition for said Writ of Error the citation to the writ *in Error*, the assignments of Error, the said Writ of Error served upon me and a copy of the opinion of the court of appeals.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed at my office in the City and County of New York, on the 24th day of July 1908.

[Seal Westchester County.]

FRANK M. BUCK, *Clerk.*

111 [Endorsed:] Supreme Court of the United States. Wilson R. Hunter, Plaintiff in Error, against Mutual Reserve Life Insurance Company, Defendant in Error. Transcript of Record.

Endorsed on cover: File No. 21,276. New York supreme court. Term No. 212. Wilson R. Hunter, plaintiff in error, vs. Mutual Reserve Life Insurance Company. Filed July 29th, 1908. File No. 21,276.





Supreme Court of the United States.

1

WILSON R. HUNTER,
Plaintiff in Error,

AGAINST

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Defendant in Error.

No. 212.

2

PLEASE TAKE NOTICE that the plaintiff in error will on Monday, the 4th day of April, 1910, upon the certified copy of the Order of the Circuit Court of the United States, for the Southern District of New York, granting leave to apply for the Order desired, and upon his verified petition hereto annexed, and upon the verified petition heretofore filed in this Court on the 28th day of February, 1910, for an Order requiring the Receivers of the defendant in error to become parties to this appeal, and on the answer thereto and the affidavit of the plaintiff in error filed in reply, and upon the transcript of record in this case, at the opening of court on that day, or as soon thereafter as counsel can be heard, submit to the Supreme Court of the United States, in its court room at the Capitol, in the City of Washington, in the District of Colum-

3

4 bia, a motion, a copy of which, and of the petition,
are herewith delivered to you.

Dated, N. Y., March 29th, 1910.

Yours, &c.,

PAUL ARMITAGE,
Attorney for Plaintiff in Error,
280 Broadway,
New York City.

To

5 WILLIAM HEPBURN RUSSELL and CHARLES
E. RUSHMORE, as Receivers of the Mu-
tual Reserve Life Insurance Co.;

WM. BEVERLY WINSLOW, Solicitor,
309 Broadway,
New York City;

FIDELITY & DEPOSIT CO. OF MARYLAND,
2 Rector Street,
New York City.

SUPREME COURT OF THE UNITED STATES. 7

<hr/> <p>WILSON R. HUNTER, Plaintiff in Error,</p> <p>AGAINST</p> <p>MUTUAL RESERVE LIFE INSUR- ANCE COMPANY, Defendant in Error.</p> <hr/>	}	No. 212.
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And now comes WILSON R. HUNTER, by his coun- 8
sel, PAUL ARMITAGE, and moves this honorable
Court that an Order be made herein requiring
WILLIAM HEPBURN RUSSELL and CHARLES E.
RUSHMORE, as Receivers of the Mutual Reserve
Life Insurance Company, to make themselves par-
ties to this case within twenty days after the service
of the said Order upon them, and that the citation
herein be amended by including therein the said Re-
ceivers, and for such other and further relief as
to the Court may seem just and equitable, and to
that end he now tenders herein his petition and affi-
davit.

Dated New York, March 29, 1910.

9

WILSON R. HUNTER,
Plaintiff in Error,
By PAUL ARMITAGE,
His Attorney,
280 Broadway,
Manhattan,
New York City.

10 SUPREME COURT OF THE UNITED STATES.

WILSON R. HUNTER,
Plaintiff in Error,

AGAINST

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Defendant in Error.

No. 212.

11

TO THE HONORABLE THE CHIEF JUSTICE AND AS-
SOCIATED JUSTICES OF THE SUPREME COURT OF
THE UNITED STATES.

Now comes WILSON R. HUNTER by PAUL ARMI-
TAGE, his Counsel, and gives this Honorable Court
to understand and be informed:

12

I. That heretofore and on the 17th day of March,
1904, the plaintiff in error by an Agreed Statement
of Facts and Submission of Controversy brought
in the Appellate Division of the Supreme Court,
Second Department, of the State of New York, a
certain suit against the defendant in error on five
certain judgments recovered against it in the
State of North Carolina. Thereafter such proceed-
ings were had in said action, that on the 29th day
of September, 1904, it was ordered and adjudged
that the plaintiff in error have judgment against
the defendant in error for the full amount of said
five judgments with costs.

II. That thereafter judgment was duly entered
in the Clerk's Office of the County of Westchester,
in the State of New York, in favor of the plaintiff
and against the defendant for the full amount of

said five judgments, which, with interest and costs, 13
aggregated \$11,497.10. From the said judgment the
defendant in error appealed to the Court of Ap-
peals of the State of New York, and thereafter on
February 28th, 1906, the Court of Appeals modified
the said judgment by reducing the same by the
sum of \$8,792.42 being the amount of four of the
said judgments so sued upon, and thereafter judg-
ment was duly entered in the Supreme Court of the
State of New York in accordance with the decision
of the Court of Appeals.

III. That thereafter and on June 29th, 1908, 14
your petitioner procured from the Hon. Edgar M.
Cullen, Chief Justice of said Court, a Writ of
Error to this Court together with a citation why
the judgment of the Court of Appeals so rendered
should not be corrected by this Court. That said
citation was duly served upon the Clerk of the
County of Westchester where said judgment roll
was filed, and on the defendant's Attorney and
also on CHARLES E. RUSHMORE, one of the Re-
ceivers who had been appointed for the defendant.

IV. Thereafter the said Writ of Error was duly
returned to this Court by the Clerk of the County
of Westchester, the record filed herein No. 21,276 15
of this Court, and the same has been duly printed
and the case is No. 212 on the October, 1909, Cal-
endar of this Court.

V. On information and belief that the said Re-
ceivers WILLIAM HEPBURN RUSSELL and CHARLES
E. RUSHMORE have now taken possession of all the
assets and property of the said corporation, and are
holding the same as Trustees to distribute among
the creditors.

- 16 VI. On information and belief that at or about the time of the appointment of the Receivers by the United States Circuit Court, there were appointed other and different Receivers in a proceeding instituted in the State Court of the State of New York. That said State Court Receivers made various applications to obtain the property of the defendant in error from the said Receivers WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE and that at length it was decided that the said Receivers appointed by the United States Circuit Court were entitled to the property and an application of the State Court Receivers to have the property turned over to them denied. Thereafter an appeal was taken from this, and the said appeal was finally dismissed.
- 17

- VII. That after the plaintiff in error was awarded judgment in his favor by the Appellate Division of the Supreme Court, on or about the 29th day of September, 1904, against the defendant for \$1,444.93 and \$87.17 costs, and after an appeal to the Court of Appeals by the defendant in error, it filed in the Office of the Clerk of the County of Westchester on October 10th, 1904, an Undertaking of the Fidelity & Deposit Company of Maryland, a Surety Company, doing business in the City of New York, undertaking to pay the said judgment and costs in case the judgment was affirmed. That by filing said bond, the defendant in error procured a stay of execution on said judgment and stayed the plaintiff from collecting the same and suspended the lien of the judgment on any property of the defendant in error. Your petitioner is informed and believes that under the laws of the State of New York, should this Court reverse the decision of the Court of Appeals and reinstate the judgment herein of the Appellate Division, that the said Fidelity & Deposit Company of Maryland, would be liable upon the Undertaking for the full amount of the five judgments.
- 18

VIII. That on or about the 28th day of February, 1910, your petitioner applied to this Court on his verified petition that an Order be made requiring the said WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE as Receivers of the defendant in error to make themselves parties to this cause within twenty days after the service of an Order to that effect upon them, and that the citation herein be amended by including therein the said Receivers. That notice of said application was served upon the said Receivers who appeared and filed in opposition thereto an Answer and Return, on or about the 2nd day of March, 1910, to which answer your petitioner filed an affidavit in reply, on the 5th day of March, 1910. 20

IX. For a more detailed statement of the various proceedings heretofore had herein and the facts of this application, your petitioner respectfully refers to his former petition herein, verified the 16th day of February, 1910, and filed in this Court on the 28th day of February, 1910, and the affidavit in reply to the Answer filed by the plaintiff in error, which affidavit was verified March 5th, 1910, and also to the transcript of record filed in this Court.

X. That thereafter this Court rendered on March 21st, 1910, the following decision upon said application: 21

"No. 212. Wilson R. Hunter, plaintiff in error, v. Mutual Reserve Life Insurance Company. Application for an order requiring the receivers of the defendant in error to become parties herein denied without prejudice to an application to the court appointing the receivers for leave to apply for the order desired."

XI. That after the said decision was rendered and on the 28th day of March, 1910, your petitioner applied to the Circuit Court of the United

22 States in and for the Southern District of New York, by which Court the said Receivers WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE were appointed, on due notice to the said Receivers and obtained from the said Court an Order granting to your petitioner leave to apply to this Court for the Order desired. A certified copy of said Order granting leave is hereto annexed.

23 WHEREFORE, your petitioner requests an Order of this Court requiring WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE as Receivers of the Mutual Reserve Life Insurance Company, to make themselves parties to this case within twenty days after the service of the said Order upon them, and that the citation herein be amended by including the said Receivers.

WILSON R. HUNTER,
Plaintiff in Error.

By PAUL ARMITAGE,
his Attorney,
280 Broadway,
Manhattan, New York City.

STATE OF NEW YORK, }
County of New York, } ss.:

24 PAUL ARMITAGE being duly sworn, deposes and says: That he is the Attorney for the plaintiff in error, WILSON R. HUNTER. That he has read the foregoing petition and knows the contents thereof, and that the same is true, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

PAUL ARMITAGE.

Sworn to before me this }
29th day of March, 1910. }

B. W. DAVIS,
Notary Public,
New York County.

UNITED STATES CIRCUIT COURT,

25

SOUTHERN DISTRICT OF NEW YORK.

JAMES C. ROBINSON,
Complainant,

VS.

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Respondent.

26

REUBEN O. SCOVILL,
Complainant,

VS.

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Respondent.

On reading and filing the petition of WILSON R. HUNTER, by his attorney, PAUL ARMITAGE, verified the 26th day of March, 1910,

27

NOW, on motion of PAUL ARMITAGE, attorney for WILSON R. HUNTER, it is

ORDERED, that the said WILSON R. HUNTER be and he hereby is granted leave to apply to the Supreme Court of the United States in a certain case therein pending entitled Wilson R. Hunter, plaintiff in error, against the Mutual Reserve Life Insurance Company, defendant in error, Docket No. 212, for an Order requiring WILLIAM HEPBURN RUSSELL and CHARLES E. RUSHMORE, as Receivers

28 of the Mutual Reserve Life Insurance Company, to make themselves parties to said case within twenty days after the service of the said Order upon them, and that the citation herein be amended by including therein the said Receivers, and for such other and further relief as to the Court may seem just and equitable.

Dated, N. Y., March 26th, 1910.

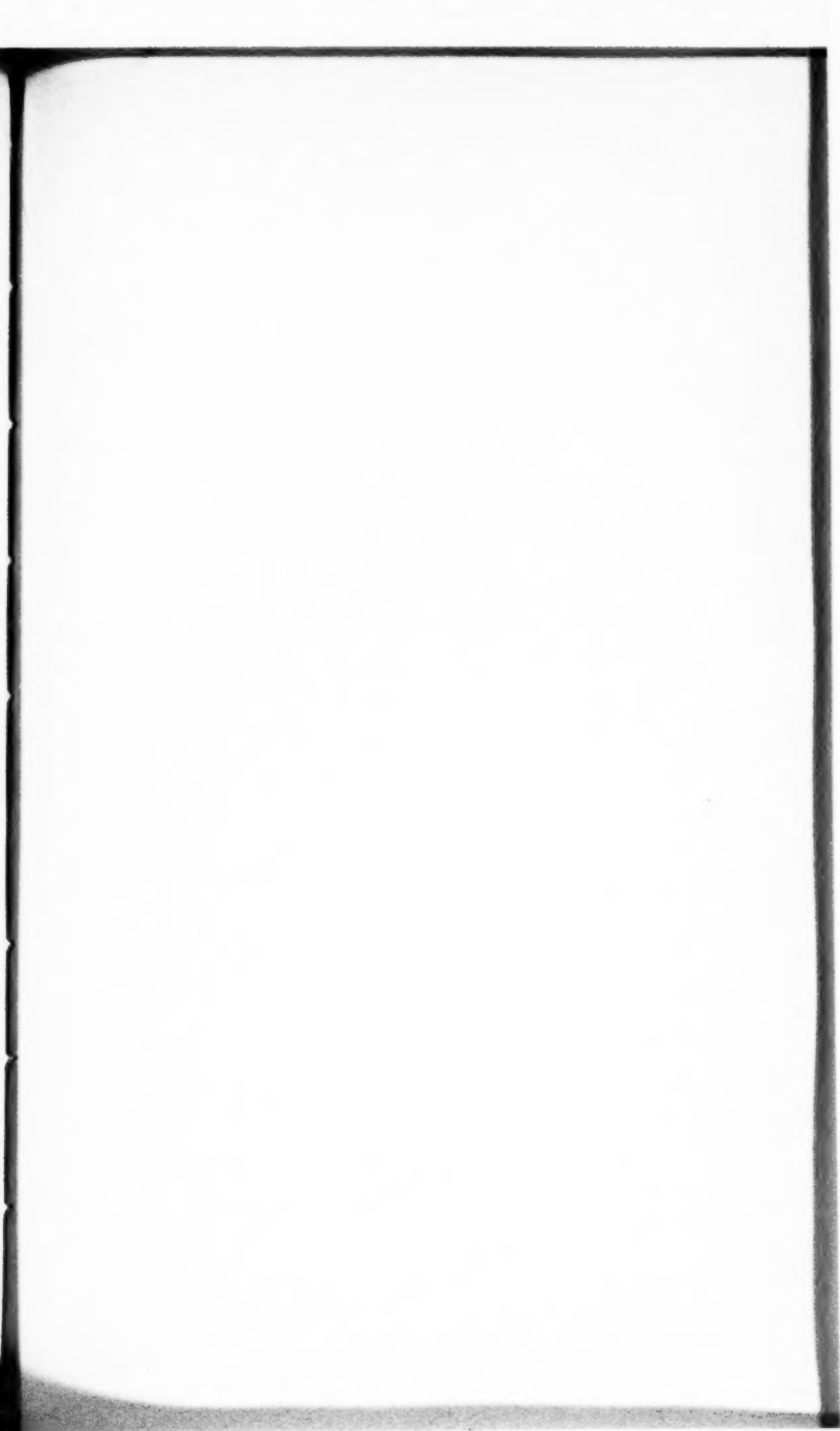
H. G. WARD,
U. S. D. J.

A copy.

JOHN A. SHIELDS,

29 [SEAL]

Clerk.



Supreme Court of the United States. 1

WILSON R. HUNTER,
Plaintiff in Error,

vs.

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Defendant in Error.

No. 212.

2

**Answer, return and opposition to
the application for an order requir-
ing the Receivers of the defendant
in error to become parties to this ap-
peal.**

TO THE HONORABLE CHIEF JUSTICE AND THE ASSO-
CIATE JUSTICES OF THE SUPREME COURT OF THE
UNITED STATES:

Now come William Hepburn Russell and Charles
E. Rushmore as Receivers of the above named de-
fendant in error, by William Beverly Winslow, 3
their counsel (appearing specially and for the pur-
poses of this motion only), and give this Honorable
Court to understand and be informed:

1. That respondents were appointed Receivers of
the properties and assets of said defendant in error
by orders passed by the Honorable H. G. Ward,

4 one of the Judges of the United States Circuit Court for the Second Judicial Circuit, acting in the Southern District of New York, on the 15th and 17th days of February, 1908, and by said orders were authorized to collect, take possession of, preserve, and care for all the property, real, personal and mixed, moneys, bonds, notes, mortgages, bills, drafts and other choses in action of said defendants in error, of whatsoever description and wherever found, and that your respondents duly qualified as such Receivers, executed and filed their bonds and oaths as such Receivers, and have been acting as such thence hitherto.

5 2. That respondents were appointed as such Receivers under the general equity powers of said United States Circuit Court, in pursuance of the prayers of certain bills in equity filed in said Court against said defendant in error, alleging the insolvency of said defendant in error, and praying the appointment of Receivers therefor and on that account, said defendant in error having admitted its insolvency in open court, through an answer filed by its duly authorized solicitors.

3. That respondents' duties, authority and powers are such, and such only, as can be conferred upon Receivers appointed by the United States Circuit
6 Court, under and pursuant to the principles of equity governing the actions of such courts.

4. Respondents admit the allegations contained in the petition to which this is a response, except as the same are hereinafter denied or qualified, but as to the allegations contained in said petition attempting to state the contents of the "agreed statement of facts" referred to therein, respondents refer to said agreed statement of facts as it appears in the printed transcript of record on pages 1 to 29, as showing more fully the facts at issue in the cause of action therein referred to.

5. Qualifying the allegations of Paragraph XIII 7
 of said petition, respondents respectfully refer to
 and make a part hereof the opinion of the Court of
 Appeals of the State of New York, referred to in
 said paragraph, as the same appears in the Trans-
 script of Record, pp. 44-50, in which will appear the
 reasons of said New York Court of Appeals for
 reducing the judgment obtained by said plaintiff in
 error in the Supreme Court of New York.

6. Qualifying the allegation of Paragraph XVI of
 said petition, respondents say that the judgment
 entered by the Supreme Court of the State of New
 York in accordance with the said decision of the
 Court of Appeals was entered on the 17th day of 8
 May, 1906, in the office of the County Clerk of
 Westchester County in the State of New York,
 and was to the effect that the judgment entered
 in the Supreme Court of New York for said West-
 chester County on October 4, 1904, be modified by
 reducing the same by the sum of ten thousand
 sixty-seven and 32/100 (\$10,067.32) dollars (being
 the amount of the reduction required by the said
 Court of Appeals of said State of New York, with
 interest thereon as provided by the judgment of
 said Court) and that the judgment theretofore en-
 tered in the said Supreme Court on the 4th day
 of October, 1904, as so modified and reduced, be
 affirmed. 9

7. That the said judgment was thereafter paid by
 said defendant in error to said plaintiff in error or
 to his attorney of record, and was SATISFIED OF REC-
 ORD in the County Clerk's Office of Westchester
 County, in the State of New York, on July 3rd,
 1907, and that since said 3rd day of July, 1907, there
 has been no judgment against said defendant in
 error in favor of said plaintiff in error by reason of
 the cause of action stated in the transcript of record
 herein.

- 10 8. Qualifying the allegations of Paragraphs XVIII, XIX and XX of said petition, your respondents allege that after the appointment of your respondents as hereinbefore stated, and to-wit, on the 19th of February, 1908, a summons and complaint was filed in the Supreme Court of the State of New York by the People of the State of New York against said defendant in error, upon which judgment was entered on April 10th, 1908, whereby said defendant in error was dissolved, and Receivers were appointed for it by the Supreme Court of the said State of New York; and while the respondents herein contested the validity of the said judgment of the Supreme Court of the said State of New York, in so
- 11 far as it appointed Receivers and undertook to give such Receivers authority to take possession of the assets and property of said defendant in error then in respondents' possession (which contention was upheld by the United States Circuit Court for the Southern District of New York—*Robinson vs. Mutual Reserve Life Insurance Company*, 162 Fed., 794), they have never contested the validity of the said order so far as it undertook to and did dissolve the said corporation on the said April 10th, 1908, nor has the validity of such dissolution been questioned by any other persons, so far as respondents have knowledge.

- 12 9. Qualifying the allegations of Paragraphs XXVII and XXVIII of said petition, respondents allege that the order finally dismissing the appeal taken in behalf of the said Receivers appointed by the Supreme Court of the State of New York, was entered on the 8th day of May, 1909.

10. Qualifying the allegations of Paragraph XXIV of said petition, your respondents say that whatever judgment was recovered by said plaintiff in error against said defendant in error, as set forth in said petition, was paid and fully SATISFIED OF RECORD on July 3rd, 1907, before the appointment of your

respondents as Receivers herein, and that on April 10, 1908, the date upon which the corporate existence of the defendant in error ceased by its dissolution, there was no judgment against said defendant in error as a result of the cause of action set forth in said petition, and they further say, upon information and belief and advice of counsel, that the said suit and cause of action abated through the dissolution of said defendant in error; (see *Pendleton vs. Russell*, 144 U. S., 640; *Rogers vs. Adriatic Fire Insurance Company*, 148 N. Y., 34; and *Polk vs. Mutual Reserve Life Insurance Association* (2 cases), 165 Federal, 1006). 13

11. On information, belief, and advice of counsel, that the only remedy of said plaintiff in error, if any he now has, is to intervene in the equity causes under orders entered in which your respondents are now acting as Receivers of the property and assets of said defendant in error, and file and prove his claim therein. 14

And now having fully responded to the application or petition and motion of said plaintiff in error, respondents ask to be hence dismissed with their costs.

WILLIAM HEPBURN RUSSELL and
CHARLES E. RUSHMORE, as Receivers of the
Mutual Reserve Life Insurance Company.

By WM. BEVERLY WINSLOW,
Their Attorney. 15

309 Broadway,
New York City.

STATE OF NEW YORK, }
County of New York, } ss.:

WILLIAM HEPBURN RUSSELL, being duly sworn, deposes and says: That he is one of the Receivers of the defendant in error, Mutual Reserve Life Insurance Company; that he has read the foregoing paper-writing and knows the contents thereof, and

16 that the same is true, except as to the matters therein stated to be alleged on information and belief, and as to these matters he believes it to be true.

WM. HEPBURN RUSSELL.

Subscribed and sworn to }
before me this 2nd day }
of March, 1910.

A. COLLINS,

[NOTARIAL SEAL.] Notary Public,
New York County.

17

18

Supreme Court of the United States.

WILSON R. HUNTER, *Plaintiff in Error*,
vs.
 MUTUAL RESERVE LIFE INSURANCE COMPANY,
Defendant in Error.

Sir : Please take notice that I shall apply to the Supreme Court of the United States, at its court house, at Washington, D. C., at the opening of Court on the 7th day of March, 1910, for permission to file an affidavit, a copy of which is hereto annexed, in answer to your return. 2

Dated, New York, March 5, 1910.

Yours, etc.,

DOUGLAS & ARMITAGE,
Attorneys for Plaintiff in Error,
 280 Broadway, Bor. Manhattan, New York City.

TO WILLIAM B. WINSLOW, ESQ.,
Atty. for Defendant in Error.
 309 Broadway, New York City.

SUPREME COURT OF THE UNITED STATES.

WILSON R. HUNTER, <i>Plaintiff in Error</i> ,	} No.
<i>vs.</i>	
MUTUAL RESERVE LIFE INSURANCE COMPANY,	
<i>Defendant in Error.</i>	212.

STATE OF NEW YORK, }
 County of New York. } *ss:*

Paul Armitage, being duly sworn, deposes and says: that he is an attorney and counsellor at law and represents the Plaintiff in Error in the above entitled proceedings.

- 4 That he has just received, March 5th, 1910, at 10.30 o'clock A. M., a copy of the answer and return of the receivers of the Defendant in Error to become parties to this appeal.

That he has read the same and that the statement contained in paragraph seventh that "the said judgment was thereafter paid by said Defendant in Error to this Plaintiff in Error or to his attorney of record, and was satisfied of record in the County of Westchester, in the State of New York, on July 3rd, 1907," and likewise appearing in paragraph tenth, is incorrect and misleading.

- 5 That this suit as appears by the transcript of record herein, page 51, paragraph 2, also page 18, paragraph 32, page 21, paragraph 42, page 23, paragraph 52, page 25, paragraph 62, and page 28, paragraph 72, was brought to enforce in the State of New York, five distinct and separate judgments for distinct and separate amounts recovered in the State of North Carolina against the defendant, as follows:

One judgment in favor of Rufus W. Hicks, a citizen and resident of North Carolina, for one thousand one hundred and fifty-three and 97/100 (\$1,153.97) dollars, with interest thereon from May 5th, 1902, together with eighteen and 95/100 (\$18.95) dollars, costs.

- 6 Four separate judgments each in favor of Enoch Wadsworth, a citizen and resident of North Carolina, amounting in all, with costs, to the sum of eight thousand seven hundred and ninety-two and 42/100 (\$8,792.42) dollars, with interest thereon from May 5th, 1902.

The Appellate Division of the Supreme Court sustained the Plaintiff in Error five causes of action. The Court of Appeals of the State of New York as appears by its decision, Record pp. 44-50, sustained the plaintiff's first cause of action on the first judgment, but refused to recognize the plaintiff's four separate causes of action based upon the other four distinct and separate judgments.

Judge Hiscock in writing the opinion of the Court of Appeals said, referring to this cause of action:

"It is conceded by appellant that the judgment appealed from should be affirmed so far as it allows recovery upon the judgment under the North Carolina policy." 7

Transcript of Record, p. 44, par. 78.

It thus appears that there was no dispute in the Court of Appeals, but that the defendant in error was liable on the first cause of action.

After the decision of the Court of Appeals, the defendant paid the amount of this first cause of action, to wit, the sum of \$1,153.97, with interest and costs awarded in the Appellate Division. It has not, however, paid or offered to pay the other four judgments of the plaintiff in error recovered in the State of North Carolina. 8

PAUL ARMITAGE.

Sworn to before me this 5th day of March, 1910.

B. W. DAVIS,

Notary Public, N. Y. County.

Endorsed: Service of a copy of the within received on the 5th day of March, 1910, is hereby admitted.

WM. B. WINSLOW,

Attorney for Receivers.

Supreme Court of the United States.

WILSON R. HUNTER,
Plaintiff in Error,

AGAINST

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Defendant.

} October Term,
1910.
No. 39.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

This is an appeal by the plaintiff, WILSON R. HUNTER, from a judgment of the Court of Appeals of the State of New York, by which it reduced a judgment theretofore awarded the plaintiff, by the sum of \$8,792.42, with interest from May 2nd, 1902 (Record, p. 41, fols. 70-72).

The amount so deducted from plaintiff's judgment represented four judgments of the Superior Court of the State of North Carolina against the defendant in favor of one Enoch Wadsworth, a citizen and resident of that State (p. 25, fols. 42, 43) and owned by the plaintiff.

The cause comes here on a writ of error (Record, pp. 60, 107, 108) on the ground that the courts of New York State have refused full faith and credit to these judgments of the State of North Carolina (U. S. Constitution, Article 4, Section 1; Record, pp. 55-57).

Statement of Facts.

The action was submitted on agreed statement of facts.

Plaintiff is the assignee and owner of five judgments recovered against defendant in the State of North Carolina by a citizen of that State in May, 1902, aggregating \$9,965.37 (see Record, pp. 18-19, pars. 32, 33; p. 21, pars. 42-43; p. 23, pars. 52-53; pp. 25-26, pars. 62-63; p. 28, pars. 72-73).

Defendant is a life insurance corporation, duly organized under the laws of New York, and for many years prior to the 20th of May, 1899, was doing a regular insurance business upon the assessment plan in the State of North Carolina (p. 1, fol. 3). Chapter 54 of the Laws of 1899, among other things provided, that no foreign insurance company should do business in that State until

" It shall, by a duly executed instrument filed in his office, constitute and appoint the Insurance Commissioner or his successor its true and lawful attorney upon (1) *whom all lawful process in any action or legal proceeding against it may be served*, and therein shall agree that *any lawful process* against it which may be served against its said attorney, shall be of the same force and validity as if served on the company, and (2) the authority thereof shall continue in force irrevocable *so long as any liability of the company shall remain outstanding in this commonwealth* " (p. 5, fol. 9).

The statutes of North Carolina continuously since the year 1876 (which antedates the entrance of the company into the State), and during all the time that the defendant has been doing business in said State, provided for service of *any legal process* upon a designated *state official* in all actions against foreign insurance companies doing business within the State, who should remain the agent of such company

for the purpose of service, so long as any liability of the company remains outstanding in the State. The material portions of the statutes are contained in the record at pages 2-4 (fols. 4-6).

The defendant complied with said statutes, filed the requisite authority and designated an agent for the purposes of service (p. 4, par. 5). On or about the 13th day of April, 1899, the defendant, pursuant to the statute above referred to, duly executed to James R. Young, the Insurance Commissioner of the State, or his successor in office, and filed in the office of said Commissioner written authority, by which the said Young, as such Commissioner, was constituted the true and lawful attorney of said defendant:

" Upon whom all lawful process in any action or legal proceeding against it may be served, subject to and in accordance with all the provisions of the laws of the State of North Carolina now in force and such other laws as may hereafter be enacted in relation thereto; and said company does hereby expressly agree that any lawful process against it which may be served upon said James R. Young, Insurance Commissioner, or his successor, shall be of the same force and validity as if served on this company, and this authority shall continue in force and irrevocable so long as any liability of said company remains outstanding in said State " (Record, p. 6, fol. 10).

Thereupon a license was issued to it to do business (p. 7, fols. 11-12).

Continuously after the said appointment of the Insurance Commissioner as agent as aforesaid and until about the 20th day of May, 1899, defendant did a regular life insurance business in said State as theretofore with agents in said State actively soliciting and writing insurance (fols. 16-17). On or about the 20th day of May, 1899, the defendant filed with the Insurance Commissioner of said State a

writing by which it attempted to revoke the above authority of the Insurance Commissioner as its agent for the purpose of the service of the process (pp. 8-9, fols. 15 and 16).

At the time of this attempted revocation and at the time of the institution of the various suits on which judgment was recovered by the plaintiff herein, the defendant had outstanding liabilities in the State of North Carolina on policies which it had duly issued to citizens thereof (fols. 16, 17). On or about May 18th, 1899, the defendant withdrew its local agents from the State of North Carolina (p. 9, fol. 16), but it continued thereafter to collect and receive premiums on outstanding policies in said State and paid losses thereon (pp. 9, 10, fols. 16, 17); to send agents into the State with authority to adjust particular losses (p. 10), who adjusted the same; it designated within the State a bank to collect premiums on a certain policy and to pay death losses thereon; it authorized an attorney, within that State, to compromise a disputed claim, and in a certain instance issued a new policy to a policyholder on the surrender of the old policy (Record, pp. 10, 11, fols. 17-19).

All these acts were done *subsequent* to the attempted revocation of the power of attorney, and many of them were done at the time of and even after the institution of the suits on which the plaintiff's judgments in North Carolina were recovered (p. 17, fol. 29; p. 19, fol. 33).

All of the plaintiff's judgments were procured by service of process on the Insurance Commissioner of North Carolina on or about the 20th and 21st days of January, 1902 (p. 17, fols. 30, 31; p. 20, fols. 34, 35; p. 22, fols. 37, 38; p. 24, fols. 41, 42; p. 27, fols. 45, 46), and said Insurance Commissioner duly mailed to the defendant copies of said summonses in all of said actions on the same day, to wit, January 21st, 1902, which were received by the defendant in New York in due course of mail (fols. 31, 35, 38, 42, 46).

Although the defendant thus had notice of all these suits, it is conceded that no appearance or defence was interposed therein. And that it allowed judgments against it to be rendered by default (fols. 31, 32, 36, 37, 39, 40, 43, 47).

It is also stipulated that the plaintiff in each one of the actions in North Carolina, in whose favor judgment was rendered, was at all times a resident and citizen of that State (fols. 29, 31, 35, 36, 39, 40, 41, 43, 44, 46, 47), that the Superior Court of North Carolina, in which the said judgments were recovered, was a Court of general jurisdiction (p. 11, par. 20), and had jurisdiction of actions against a foreign corporation by a resident of that State for *any cause of action* (p. 11, par. 21). It is also conceded that all the judgments so recovered were duly assigned to the plaintiff herein (fols. 36, 39, 40, 43, 44, 47).

It further appeared that these five judgments so recovered against the defendant in the Superior Court were upon contracts of insurance issued by the defendant in one case to a resident of North Carolina while it was doing business there (fol. 31). In the remaining four cases to residents of New York and New Jersey. After the defendant's attempted withdrawal from business in North Carolina, the policies of insurance were acquired by one Enoch Wadsworth, a citizen of North Carolina (fols. 35, 38, 39, 42, 43, 46).

On this state of facts the Appellate Division of New York State awarded plaintiff judgment for the full amount of said five judgments (pp. 31, 32, 34, 37).

The defendant thereupon appealed to the Court of Appeals and filed a surety company bond to stay plaintiff from collecting this judgment.

On appeal by the defendant, the Court of Appeals sustained the plaintiff's judgment in so far as it was based on the North Carolina judgment recovered on the policy of insurance issued in that State, but reversed or reduced his judgment in so far as it was

founded on the other four North Carolina judgments based on policies issued elsewhere (Record, p. 44-50; p. 43). Thereupon the plaintiff by writ of error appealed to this Court.

The defendant, Mutual Reserve Insurance Company, subsequently became insolvent, receivers were appointed for it, and by an order of this Court were brought in as parties defendant to this appeal.

The decision of the Court of Appeals from which this writ of error is taken, was predicated on two grounds. First, that on the stipulated facts the insurance company did not continue doing business in the State of North Carolina after the attempted revocation of the Insurance Commissioner's authority to receive process and at the time of service thereof in these actions, and hence it could revoke the power and was not subject to jurisdiction of the North Carolina courts (fols. 82, 83). Second, that the power of attorney, though irrevocable by its terms so long as liabilities of the company continued, was revocable as to all persons save residents of the State of North Carolina who had taken out policies of insurance in reliance thereon (fols. 83, 86).

We maintain that in both these respects the learned Court fell into error.

POINTS.

Certain preliminary propositions of law are too well settled to need more than a brief statement. These are:

I.

A State has the arbitrary power to exclude foreign insurance companies altogether from her territory.

Hooper vs. California, 155 U. S., 648,
at 655.

II.

The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. Issuing a policy of insurance is not a transaction of commerce. Such contracts are not interstate transactions though the parties may be domiciled in different States. They do not constitute a part of the commerce between the States.

Paul vs. Virginia, 8 Wall., 168.

Phil. Fire Insurance Co. vs. N. Y., 119 U. S., 110.

Crutcher vs. Kentucky, 141 U. S., 47.

Hooper vs. California, 155 U. S., 648, at 654.

Two corollaries are deducible from the foregoing proposition. First it follows that:

III.

A State can inhibit the negotiation of insurance policies within her confines even through the medium of agents sent from other States.

(See cases cited under II.) A second necessary consequence is that

IV.

A State has the power if she allow any such insurance company to enter her confines, to determine the conditions on which the entry shall be made and the right to enforce any conditions so imposed. The power to exclude embraces the power to regulate and the power to enact and to enforce such regulations.

Hooper vs. California, 155 U. S., 648.

The logical conclusion from these four propositions is that

V.

When a foreign insurance corporation undertakes to transact business in a State other than that in which it is incorporated, it submits itself to the authority of the courts of such other State, and is bound, so long as that business continues, by the statutory provisions respecting the method of such courts obtaining jurisdiction over it.

And such is the law.

Pringle vs. Woolworth, 90 N. Y., 509.

People vs. Life Insurance Co., 7 App. Div., 297.

Gibbs vs. Queens Insurance Company, 63 N. Y., 120.

"It becomes bound by judgments rendered upon service on the designated agent, because it has consented so to be bound."

Douglass vs. Insurance Company, 138 N. Y., 220.

Mutual Reserve Co. vs. Phelps, 190 U. S., 147.

Gibson vs. Mfg. Insurance Co., 144 Mass., 81.

Aldich vs. Blatchford, 177 Mass., 369.

"It (the foreign corporation) cannot agree to conditions as the price of admission and after having been admitted turn around and dispute them."

People vs. Fire Association, 92 N. Y., 311.

Vose vs. Cockroft, 44 N. Y., 415.

Sherman vs. McKeon, 38 N. Y., 266.

Phyfe vs. Eimer, 45 N. Y., 102.

"When a foreign corporation sends its agents into another State, or transacts its business there, availing itself of the protection of the laws of such State, there is no just reason why it should not be deemed to have subjected itself through its agents to the jurisdiction of the courts of that State" (93 N. Y., p. 597).

To the solution of the problem whether the four judgments recovered by Wadsworth were valid and were entitled to be given extra territorial effect under the full faith and credit clause of the Constitution, it becomes a material inquiry to ascertain whether at the time of service of process in January, 1902, the Mutual Reserve Insurance Company was engaged in doing business within the State of North Carolina. For, if it were, it cannot be seriously contested that the service on the Insurance Commissioner was ineffectual against it.

Mutual Life Ins. Co. vs. Spratley, 172 U. S., at 610.

Mutual Reserve Association vs. Phelps, 190 U. S., 147.

In fact, it was frankly conceded by the learned Judge who wrote the opinion of the Court of Appeals of New York State that this would be so. He says (see Record, p. 46, fol. 82):

“IT MAY BE ASSUMED AT ONCE THAT IF DEFENDANT UPON A FAIR CONSTRUCTION OF LANGUAGE AND OF ITS ACTS DID CONTINUE GENERALLY TO TRANSACT AND CARRY ON THE BUSINESS OF INSURANCE IN NORTH CAROLINA AFTER ITS PURPORTED REVOCATION OF ITS POWER OF ATTORNEY AND WITHDRAWAL FROM SUCH STATE, THE LATTER SHOULD BE HELD INEFFECTUAL TO PREVENT A CONTINUANCE OF THE AUTHORITY OF THE INSURANCE OFFICIAL TO RECEIVE SERVICE OF A SUMMONS. THE AUTHORIZATION BY THE COMPANY OF SERVICE UPON SAID OFFICIAL WAS A CONDITION OF ITS TRANSACTING BUSINESS IN SAID STATE, AND SO LONG AS SUCH TRANSACTION OF BUSINESS CONTINUED THE COMPANY SHOULD NOT BE ALLOWED TO ESCAPE THE CONSEQUENCES OF ITS AGREEMENT BY ANY DECEPTIVE OR APPARENT WITHDRAWAL.”

On the threshold of the inquiry we are confronted with the question, was this insurance company doing an insurance business within the State at the time of service of process. If this is answered in the affirmative, then all the other questions in the case lapse; the Wadsworth judgments were duly rendered, valid and enforceable, and judgment of the Court of Appeals refusing to extend full faith to them, should be reversed.

We submit

VI.

Upon the facts herein, the defendant company continued to do business in North Carolina, after the attempted revocation of the power of attorney given to the Insurance Commissioner, and was actually doing business within the State on the date when service of process was made in each of the suits resulting in the four judgments.

Before proceeding, let us restate the proposition already laid down in Point II as to the peculiar nature of the business of insurance in its relation to Interstate Commerce. The utterances of this Court define it with precision.

In *Paul vs. Virginia* (8 Wall., 168) this Court, speaking through Mr. Justice Field, said:

“Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter, offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States. The policies do not take effect—are not executed contracts—until delivered by the agent in Virginia. They are then local transactions, and are governed by the

local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York whilst in Virginia would constitute a portion of such commerce" p. 183.

This language was reiterated in the case of

Phila. Fire Ins. Co. vs. New York (119 U. S., 110).

In *Crutcher v. Kentucky*, 141 U. S., 47, *supra*, the Court, in applying the exception to the general rule, held that the State of Kentucky was without power to prevent a corporation engaged in interstate commerce from entering that State and carrying on its business therein, and also pointed out the distinction between the making of contracts of insurance and interstate commerce, or the necessary instrumentalities thereof, as follows:

"The case is entirely different from that of foreign corporations seeking to do a business which does not belong to the regulating power of Congress. The insurance business, for example, cannot be carried on in a State by a foreign corporation without complying with all the conditions imposed by the legislation of that State. So with regard to manufacturing corporations and all other corporations whose business is of a local and domestic nature, which would include express companies whose business is confined to points and places wholly within the state. The cases to this effect are numerous" (p. 59).

In *Hooper vs. California* (155 U. S., 648, at 655), after quoting with approval the foregoing extracts, this Court said:

"The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no

difference whatever between insurance against fire and insurance against 'the perils of the sea.'

The State of California has the power to exclude foreign insurance companies altogether from her territory, whether they were formed for the purpose of doing a fire or a marine business. She has the power, if she allows any such companies to enter her confines, to determine the conditions on which the entry shall be made. And, as a necessary consequence of her possession of these powers, she has the right to enforce any conditions imposed by her laws as preliminary to the transaction of business within her confines by a foreign corporation, whether the business is to be carried on through officers or through ordinary agents of the company, and she has also the further right to prohibit a citizen from contracting within her jurisdiction with any foreign company which has not acquired the privilege of engaging in business therein, either in his own behalf or through an agent empowered to that end. The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory of the State which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent, subject always, of course, to the paramount authority of the Constitution of the United States."

It is thus seen that the business of insurance is not within the protection of the Interstate Commerce clause of the U. S. Constitution. A foreign insurance corporation has no right to do any part of its insurance within the borders of a State, except by its express permission and under the conditions imposed.

This cardinal distinction existing between the business of insurance and that of a corporation or person engaged in *interstate commerce* is of prime importance in this case. It is because the learned Court of Appeals of New York lost sight of the

same, that it reached the conclusion that the defendant insurance company was not, at the time of service of process, doing business within the State of North Carolina.

In the majority of cases where the question is presented whether a foreign corporation is so engaged in a business within a State as to subject it to process or taxation, the *corporation is one whose business falls within the definition of interstate commerce*:—such as manufacturing companies, railroads, express companies and the like. *Such corporations can invoke the protection of the U. S. Constitution and cross the borders of a foreign State without her permission, so long as its business done there is confined to interstate commerce.* Concretely, a New York manufacturing company, may send its salesmen into the State of North Carolina, enter into contracts there with her citizens and deliver goods from the home office. Such acts would unquestionably be “doing business” in the State of North Carolina within every commercial or legal definition of the phrase. But such acts would not subject the New York corporation to the jurisdiction of North Carolina, because, and the reason is plain, the corporation had the absolute right under the United States Constitution to engage in a limited business within every other State, *i. e.*, *Interstate Commerce*. So long as it did not overstep that right the State of North Carolina was without power over it. It was merely exercising its inherent and natural rights as a citizen under the United States Constitution.

Hence, in every case of a foreign corporation of this character the question to be determined in advance of subjecting it to the control of a State, is not whether the corporation is doing business within the State, but *whether it is doing a local business therein*—in other words, whether it is doing an intrastate business. *The corporation has the absolute right, with or without consent, to do business of a limited character within other States. It is only*

when it undertakes to engage in a local business elsewhere than in the State of its creation that it comes within the grasp and control of other State sovereignty.

The case of a foreign insurance company is wholly different. It is not engaged in interstate commerce. No portion of its business is of that character. It has no right by virtue of the United States Constitution or otherwise to engage in any part of its business within the borders of any other State than that of its birth, unless with express or implied permission of that other State. If the corporation do so, it submits itself to the jurisdiction of the sister State and its courts.

In determining, therefore, whether a foreign insurance company is subject to the jurisdiction of the courts of another State, the inquiry is different from that involved in the case of a company doing an interstate commerce business.

The question to be solved is, Does the insurance corporation do any portion of its business within the State in question? If so, it is within the control of the State so long as that business continues. It is not essential to the support of jurisdiction to show that the insurance company is doing a local business in the sister State, it is enough that it is doing and continues to do any part of its business therein.

And this Court has so held (see Spratley & Phelps cases, post).

The inquiry, therefore, has a broader range and wider scope. The decisions rendered in cases of companies engaged in interstate commerce only tend to mislead and confuse. This distinction is familiar to this Court. It is that existing between interstate and intrastate commerce. The pertinency of the distinction thus elaborately dwelt upon to the problem *sub judice* now becomes apparent. The corporation before the Court here is one engaged not in interstate commerce, but exclusive in insurance (Record, p. 2, fol. 3). The only business that

it has ever carried on or sought to carry on in the State of North Carolina was that of insurance (p. 3, fol. 4; p. 9, fol. 16). The question, therefore, is not was it doing a *local business* in North Carolina at the time of service of process but was it carrying on an insurance business in the broadest sense of that term, within the State?

The scope of the inquiry is now defined. The proportions of the problem before the Court are now seen:

It is to ascertain whether on the conceded facts here, the Mutual Reserve Life Insurance Corporation was not, at the time of the service of process on which the four Wadsworth judgments are founded (and long after) doing a substantial portion of its insurance business in the State of North Carolina.

After setting out the various former statutes of North Carolina prescribing the conditions under which foreign insurance companies are entitled to do business therein and are "*authorized to make in said State contracts of Life Insurance on Assessment Plan*" (p. 7, fol. 11), the following stipulated facts appear (p. 3, par. 3rd; p. 4, par. 5th):

"PARAGRAPH THIRD.—Prior to March 13, 1883, the said Mutual Reserve Life Insurance Company had duly complied with the provision of said Chapter 157 of the Laws of 1876-77 of North Carolina above set forth, and was duly admitted to transact business in the said State."

"PARAGRAPH FIFTH.—Prior to March 13, 1883, the said Mutual Reserve Life Insurance Company under its former name of Mutual Reserve Fund Life Association, had duly complied with the provisions of the said Chapter 57 of the Laws of 1883 of North Carolina above set forth, and was duly admitted to transact business in the said State."

The Willard Act [that in question] is then quoted *in extenso* (Record, pp. 4-5); the filing by the Insur-

ance Company of the power of attorney required by the Act is recited, which power of attorney contained a stipulation that (p. 6, fol. 10)

"the Mutual Reserve Fund Life Association of the City of New York and the State of New York, desiring to transact business in the State of North Carolina in conformity with the laws thereof, does hereby make, constitute and appoint James R. Young, Insurance Commissioner of the State of North Carolina, or his successor, its *true and lawful attorney in and for said State, upon whom all lawful processes in any action or legal proceeding against it may be served, subject to and in accordance with all the provisions of the laws of the State of North Carolina now in force, and such other laws as may hereafter be enacted in relation thereto; and said Company does hereby expressly agree that ANY LAWFUL PROCESS against it which may be served upon said James R. Young, Insurance Commissioner, or his successor, shall be of the same force and validity as if served upon this Company, and this authority shall continue in force and irrevocable so long as any liability of the said company remains outstanding in the said State.*"

It is then stipulated that (p. 6, par. 8):

"After the filing of said power of attorney, but as of April 1st, 1899, the Insurance Commissioner of the State of North Carolina issued to the said Mutual Reserve Fund Life Association a license, as follows: 'No. 37. State of North Carolina, Insurance Department.

'RALEIGH, April 1st, 1899.

'The Mutual Reserve Fund Life Insurance Company of New York, having filed an application with this Department to do business in the State of North Carolina. This is to certify, That said Company has complied with the North Carolina Insurance Act of 1899,' and is authorized to make in this State contracts of Life Insurance on Assessment Plan."

The following dates are important in order to sieze the significance of the succeeding stipulations of fact:

May 18th, 1899, was the date when the Mutual Reserve Life Insurance Company attempted to end its *local* business in North Carolina (pp. 8, 9; fols. 15-16).

January 21st and 22nd, 1902, was the date of service of process of the judgments in question (p. 20, fols. 34, 35; p. 22, fols. 37, 38; p. 24, fols. 41, 42; p. 27, fols. 45, 46).

The following stipulations of fact appear (Record, pp. 9-11, pars. Eleventh to Nineteenth):

“ELEVENTH: The defendent under the name of the Mutual Reserve Life Association transacted the business of life insurance upon the co operative or assessment plan generally in the State of North Carolina, having local agents in that State, from the year 1883 up to the 17th day of May, 1899.

TWELFTH: That the policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association, between the year 1883 and the 17th day of May, 1899, have been and are in force in the State of North Carolina, and were in force on January 20th and 21st, 1902.

THIRTEENTH: That on the 18th day of May, 1899, the defendant withdrew all its agents from the State of North Carolina, and since that date has had no agent in the State of North Corolina, this admission being, however, without prejudice to the disputed question as to whether the resolution adopted by the defendant May 17th, 1899, purporting to revoke the power of attorney theretofore given to James R. Young, Insurance Commissioner, was effective to revoke and terminate his authority as attorney for service under such power of attorney as regards the plaintiff's assignors.

FOURTEENTH: That since the 18th day of May, 1899, premiums or assessments upon policies of the defendant issued by it under its

former name of the Mutual Reserve Fund Life Association between the year 1883 and the 17th day of May, 1899, and outstanding in the State of North Carolina, have been paid to the defendant by being remitted to it direct by mail by the policy-holders at its home office in the City, County and State of New York, where by the terms of the policies such premiums were in each case payable, and such premiums or assessments have been received by the defendant when so remitted by mail at its said home office.

FIFTEENTH: That since the 18th day of May, 1899, where death losses have occurred in North Carolina under policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association between the year 1883 and the 17th day of May, 1899, the amount of such losses, as adjusted, has from time to time been paid by the defendant to the person entitled to receive the same by mailing a check for the amount of the loss to such person from the home office of the defendant in the City, County and State of New York, where, by the terms of the policies in each case, the loss was payable.

SIXTEENTH: That in June, 1902, a claim was made upon the defendant under a policy issued by the defendant on the life of one Edward Broadhurst, in Washington, in the District of Columbia, where the said Edward Broadhurst resided and died. The validity of this claim was disputed by the defendant and an adjuster was sent to the City of Washington in the District of Columbia, for the purpose of adjusting the loss there. Such adjuster found that the beneficiary resided in the City of Wilmington in the State of North Carolina, and he, therefore, went to that city and adjusted the loss with her there in the month of June, 1902. The adjustment of this particular loss was the only authority the adjuster had at the time and he was sent to make such adjustment only; he did have authority to make the same.

SEVENTEENTH: That on August 19, 1899, Edwin G. Hill of New Bern, North Carolina, who held a policy issued by the defendant under

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TWELFTH: That the policies issued by the defendant under its former name of the Mutual Reserve Fund Life Association, between the year 1883 and the 17th day of May, 1899, have been and are in force in the State of North Carolina, and were in force on January 20th and 21st, 1902.

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SEVENTEENTH: That on August 19, 1899, Edwin G. Hill of New Bern, North Carolina, who held a policy issued by the defendant under

its former name of the Mutual Reserve Fund Life Association prior to May 17, 1899, died in the City of New Bern, North Carolina, and claim was made upon the defendant under the said policy, and proofs of loss and claim presented to it at its home office in the City of New York, where, under the terms of the policy, the loss was payable. In January, 1900, the defendant through its proper officer, wrote from its home office in New York to the beneficiary under the policy in New Bern, North Carolina, that it was prepared to pay the loss and would forward check for the amount of the same to the Citizens' Bank of New Bern, North Carolina, where the beneficiary could obtain the same upon payment of two post-mortuary calls or assessments due on the policy. The defendant did so mail said check, and on February 15, 1900, the beneficiary under said policy went to the Citizens' Bank of New Bern, obtained the check, and there handed to the cashier of said bank a check for the two post-mortuary assessments to be transmitted to the defendant.

EIGHTEENTH: That in August, 1902, a claim was made upon the defendant under a policy issued by it under its former name of the Mutual Reserve Fund Life Association prior to May 17, 1899, on the life of one Stanley Bratcher for \$1,000. This claim was disputed by the defendant, and suit was threatened. At that time Col. John W. Hinsdale was a member of the Bar of the State of North Carolina, and had been at times retained by the defendant, and upon the threat of suit in the Bratcher case the defendant retained Col. Hinsdale as an attorney, and he subsequently, during the month of August, 1902, arranged a compromise of the case for \$475, and drew his draft on the defendant for that amount, which was paid by the defendant on presentation of said draft to it at its home office in the City of New York. The negotiations had by Col. Hinsdale with the other side with reference to this claim were had in the month of August, 1902, in the City of New Bern, North Carolina.

NINETEENTH: That on the 21st day of January, 1886, the defendant under its former name of the Mutual Reserve Fund Life Association issued and delivered to one Mary E. Carstarphen, in the State of North Carolina, its policy for \$5,000. In October, 1899, Mrs. Carstarphen wrote from North Carolina to the defendant at its home office in the City, County and State of New York, a letter requesting that the amount of her policy be reduced from \$5,000 to \$2,000. The defendant wrote in reply from its home office, that upon receipt by it of the old policy of \$5,000, it would re-write the same for \$2,000, and Mrs. Carstarphen mailed the policy to the defendant at its home office in New York, and on October 17, 1899, at such home office, the defendant re-wrote the said policy for \$2,000, instead of \$5,000, and mailed the re-written policy to Mrs. Carstarphen from the home office of the defendant to her in North Carolina."

It was on these stipulated facts that the learned Court of Appeals of the State of New York held that the defendant insurance company did not continue to do any business within the State of North Carolina after May 18th, 1899, and was not doing business therein at the time of service of process in the suits in question (Opinion, Record, p. 47, fols. 82, 83).

This we submit was grave error. Under the decisions of this Court, to which attention will now be called, the Mutual Reserve Insurance Company continued to do and was at the time of service of process doing insurance business within the State and subject to the jurisdiction of its courts.

The first of these cases to which we will invite attention is that of Connecticut Mutual Life Insurance Co. *vs.* Spratley, 172 U. S., 602. In that case a life insurance company did a general life insurance business in Tennessee from *February 1, 1870, until July 1, 1894*. In 1887 the Legislature of that State passed an act providing that process upon foreign corpo-

rations might be served upon "*any agent of said corporation found within the county where the suit is brought.*" We quote from the statement of facts (172 U. S., p. 607): "On July 1, 1894, the company ceased issuing any new policies in the State of Tennessee, and *withdrew its agents from the State, and on July 21, 1894, notified the State Insurance Commissioner to that effect.* It had, however, a number of policies outstanding in the State, and continued to receive the premiums on these policies through *its agent in another state and to settle, by payment or otherwise, the claims upon those policies as they fell due.*" Under this state of facts this Court held that the company still continued to do business in the State of Tennessee, and was subject to the statutes of that State providing for the manner of service of process upon it; and hence, that the service of process upon an agent sent into the State to adjust a loss, even though he had no express authority from the company to receive process on its behalf, was *sufficient to sustain a judgment in personam.* In its opinion the Court, after pointing out that in order to sustain the judgment "*it is a material inquiry to ascertain whether the foreign corporation is doing business within the State,*" citing *Goldey vs. Morning News*, 156 U. S., 519; *Merchants Mfg. Co. vs. Railway*, 13 F. R., 358, said:

"We think the evidence in this case shows that the company was doing business within the State at the time of this service of process. From 1870 until 1894 it had done an active business throughout the State by its agents therein, and had issued policies of insurance upon the lives of citizens of the State. How many policies it had so issued does not appear. Its action in July, 1894, in assuming to withdraw from the State, was simply a recall of its agents doing business therein, the giving of a notice to the State Insurance Commissioner, and a refusal to take any new risks or to issue any new policies within the State. ITS OUTSTANDING POLICIES WERE

NOT AFFECTED THEREBY, AND IT CONTINUED TO COLLECT THE PREMIUMS UPON THEM AND TO PAY THE LOSSES ARISING THEREUNDER, AND IT WAS DOING SO AT THE TIME OF THE SERVICE OF PROCESS UPON ITS AGENTS. * * * IT CANNOT BE SAID WITH TRUTH, AS WE THINK, THAT AN INSURANCE COMPANY DOES NO BUSINESS WITHIN A STATE UNLESS IT HAVE AGENTS THEREIN WHO ARE CONTINUOUSLY SEEKING NEW RISKS, AND IT IS CONTINUING TO ISSUE NEW POLICIES UPON SUCH RISKS.

HAVING SUCCEEDED IN TAKING RISKS IN THE STATE THROUGH A NUMBER OF YEARS, IT CANNOT BE SAID TO CEASE DOING BUSINESS THEREIN WHEN IT CEASES TO OBTAIN OR ASK FOR NEW RISKS OR TO ISSUE NEW POLICIES, WHILE AT THE SAME TIME ITS OLD POLICIES CONTINUE IN FORCE, AND THE PREMIUMS THEREON ARE CONTINUOUSLY PAID BY THE POLICYHOLDERS TO AN AGENT RESIDING IN ANOTHER STATE, AND WHO WAS ONCE THE AGENT IN THE STATE WHERE THE POLICYHOLDER RESIDED."

It need scarcely be pointed out that in the case cited it was essential to the maintenance of jurisdiction that the Insurance Company was as a fact doing business in the State at the time of service of process. There was no stipulation that the authority of any State Commissioner or local agent to receive process, should continue after the company had withdrawn from the State until all its liabilities were settled. There was nothing except the fact *simpliciter* that the company continued to engage in business within the confines of the State. This Court held on the identical facts that are stipulated in the record in the case at bar that the Insurance Company did continue to transact business.

The learned Court of Appeals does not attempt to distinguish this case on the proposition for which it is cited. It merely points out that (Record, p. 49),

"the action was brought in the Courts of Tennessee upon policies issued for the benefit of residents of that State while the company was regularly engaged in doing business there and before its attempt to withdraw, and

service in said action was made upon a conceded representative of the company who had come into the State for the purpose of adjusting and settling losses under said policies. It was held that under the circumstances of that case the company was doing business within the State, and that service was properly made upon it in the manner indicated."

The illogicality of the attempted distinction is quite apparent. It would be deciding that an insurance company was and was not doing business in the State on the same facts that the company would *continue doing business* within the State and subject to the jurisdiction of its Courts as to citizen A who had a policy of insurance in it, but not as to citizen B, who had not. Carried to its logical conclusion, it would subject a foreign manufacturing corporation to suits arising out of the local business, even after it had withdrawn from the State and ceased to do all business therein, and this, in the absence of any stipulation between the State and corporation to that effect.

This Court did not intend to announce any such doctrine. The excerpt from its opinion above quoted negatives any such claim. To hold otherwise would be not only to ignore the plain words of the opinion but to overlook entirely the distinction between a corporation engaged in insurance and one engaged in interstate commerce. This Court's opinion was fully in accord with the rule laid down in *Hooper vs. California*, 155 U. S., 648; *Paul vs. Virginia*, 8 Wall., 168, and analogous cases, and *its decision in the Spratley case has its foundation in the proposition that the Insurance Company was subject to jurisdiction of the State courts because it was continuing to do business therein.*

Any doubt that might have existed (if any such could exist) as to the doctrine announced by this Court in the *Spratley* case, was laid at rest by the case of *Mutual Reserve Fund Life Association vs.*

Phelps, 190 U. S., 147. In that case prior to October 10, 1899, the Mutual Reserve Fund Life Association had done a general insurance business in the State of Kentucky. By the Kentucky statutes it was provided that foreign insurance companies should file with the Insurance Commissioner of that State an authority to receive process in any action brought in the State, and in compliance with this statute the insurance company filed such a power of attorney. *THIS POWER OF ATTORNEY WAS NOT, EITHER BY ITS TERMS OR UNDER THE STATUTE, IRREVOCABLE. In October, 1899, the Insurance Commissioner canceled the license of the company to do business in the State, and from and after that date the association had no agent or agents in the State of Kentucky and did no new business whatever in the State.* The company thereupon went through the form of revoking the authority of the Commissioner (see printed transcript of record in Phelps's case on appeal to Supreme Court, at p 4, par. 5). Thereafter and in February, 1900, Phelps commenced an action in the State Court of Kentucky. The only service made was upon the Insurance Commissioner. This Court held that this judgment was valid, basing its opinion upon the fact that so long as the company was doing business within the State the power of attorney was irrevocable. The Court said:

"IT IS STIPULATED BETWEEN THE PARTIES THAT OUTSTANDING POLICIES EXISTING BETWEEN THE ASSOCIATION AND CITIZENS OF KENTUCKY WERE CONTINUED IN FORCE AFTER THE ACTION OF THE INSURANCE COMMISSIONER ON OCTOBER 10, 1899, AND THAT ON SAID POLICIES THE ASSOCIATION HAD COLLECTED AND WAS COLLECTING DUES, PREMIUMS AND ASSESSMENTS. IT WAS, THEREFORE, DOING BUSINESS WITHIN THE STATE "

The Court further said (p. 158):

"It is true in this case the Association did not voluntarily withdraw from the State, but

was in effect by the State prevented from engaging in any new business. Why this was done is not shown. It must be presumed to have been for some good and sufficient reason, and it would be a harsh construction of the statute that, because the State had been constrained to compel the Association to desist from engaging in any further business, it also deprived its citizens who had dealt with the Association of the right to obtain relief in its courts. We conclude, therefore, that the service of summons on the Insurance Commissioner was sufficient to bring the Association into the State court, and there being nothing else to impeach the judgment it must be considered as valid."

The facts as to doing business were stipulated in the Phelps case. For the convenience of the Court we quote from the record in the Phelps case (see Phelps Record on Appeal to this Court, p. 33, fol. 42):

"It is agreed between the complainant and defendant that the outstanding policies existing between the Mutual Reserve Fund Life Association and citizens of Kentucky were continued in force after the action of October 10th, 1899, of the Insurance Commissioner of the State of Kentucky (*i. e.*, revoking license of company and excluding it from the State, p. 35). That said policies were in force continuously up to and including the time of the hearing of the motion to quash the service of the summons, and that on said policies the association had collected and were collecting dues, premiums and assessments."

This was through an agent out of the State. A comparison of this with the stipulated facts in the present case quoted above (Record, pp. 9-11) discloses that they are identical. On no theory of law could the judgment in the Phelps case be sustained as one *in personam* and awarded effect outside the State where it was recovered except on a finding that the insurance company was at the time of the

service of the process, as a fact, doing business therein and subject to personal service. This Court's decision in this respect was in logical accord with its former opinions.

The facts in this case at bar are identical, except that we have the additional acts of doing business in the State set out in paragraphs 16 to 19 (fols. 17-19). Therefore at the time of service of process on which these judgments were recovered the defendant company was within the borders of the State of North Carolina and *doing business* therein.

Could defendant company be within the State for the purpose of doing business and without it for the purpose of jurisdiction? Could it avoid, while it continued within the jurisdiction, the statutes of the State of North Carolina, providing the method of service of process in "any lawful action?" Could it revoke its power of attorney to the Commissioner of Insurance to receive on its behalf "all lawful process in any action" (fol. 10) while it continued to conduct business therein? We submit it could not.

The Court of Appeals of New York State again did not attempt to avoid the binding effect of this decision on the point cited. It missed entirely its rationale. The only distinction sought was that the plaintiff in the Phelps case was a local policyholder. The sophistry of this has already been pointed out.

Let us turn now to another case decided by this Court:

Birch vs. Mutual Reserve Insurance Co., (200 U. S., 612).

In the Birch case the plaintiff was the assignee of seven judgments recovered against the same defendant in the State of North Carolina and the process in each one of those actions was served upon the Insurance Commissioner of North Carolina after the attempted revocation, pursuant to the same statute of North Carolina and the same power of attorney

filed by the defendant corporation with the Commissioner of Insurance of that State. In the Birch case the same facts as here in regard to the acts of the defendant corporation within the State of North Carolina after the attempted revocation of the power of attorney were stipulated.

It is unnecessary to quote them, but it may be said that the stipulated facts in regard to the companies acts in North Carolina after the attempted withdrawal, in this case, were copied from and are identical with those in the Birch record (see Record in Birch case on Appeal in this Court, pp. 20, 22, fols. 33-35; Record here, pp. 9-11, par. 11th to 19th).

These facts the Court found in the Birch case constituted a continuance of the business within the State.

I find, said Judge Gaynor "that subsequent to the 20th day of May, 1899, the defendant continued to do business in said State, *but it did not have agents* in said State soliciting new business therein and the defendant was doing insurance business in said State at the time of the service of process in the several suits wherein the judgments were recovered which are sued on in this action" (Record in Birch case to this Court, p. 12, fol. 22).

The Appellate Division affirmed this judgment on the same ground, basing its judgment on the Spratley and Phelps cases (91 App. Div. of State of N. Y., 384).

The Court said:

"In this case the learned trial Court has found upon sufficient evidence that subsequently to May 20, 1899, the defendant continued to do business in the State of North Carolina, and was doing business at the time of the service of process in the several suits wherein the judgments were recovered which were sued on this action. It is true that the defendant did withdraw its agents from the State and cease to solicit new business, but it continued to collect premiums and to pay

losses on its old policies, and to compromise and adjust claims arising thereon in the State." And, after citing the Spratley and the Phelps cases, continued:

"It necessarily follows that the revocation of a power of attorney was without effect so far as regards the contracts represented by the plaintiff's judgment, and that the Insurance Commissioner, so long as the defendant continued to transact the business of insurance within the State, remained the defendant's agent for the service of the process upon which the validity of that judgment depends" (Record, Birch case, fol. 290, p. 186).

This was affirmed by the Court of Appeals without opinion (181 N. Y., 583). Upon appeal by the defendant to this Court, this Court on December 18, 1905, affirmed the judgment. Its opinion is as follows (200 U. S., 612):

"In Error to the Supreme Court of the State of New York.
(December 18th, 1905).

PER CURIAM:

"Judgment affirmed, with ten per cent. damages, in addition to interest and costs (Mutual Reserve Fund Life Association *vs.* Phelps, 190 U. S., 147; Connecticut Mutual Life Insurance Company *vs.* Spratley, 172 U. S., 602; Egan *vs.* Hart, 165 U. S., 188; Richardson *vs.* L. & N. Railroad Co., 169 U. S., 128; Young *vs.* Valentine, 177 N. Y., 347; Woodward *vs.* Mutual Reserve Fund Life Insurance Co., 178 N. Y., 485; Birch *vs.* Same, 181 N. Y., 583; 91 App. Div., 384)."

It is significant that the Supreme Court in affirming this judgment expressly approved the opinion of the Appellate Division in the Birch case (91 A. D., 384).

We submit these authorities are controlling. They establish where an insurance company goes into a state and makes contracts of insurance, it does not cease to do business simply because it withdraws its agents and solicits no new business. Continuing to

collect premiums on the old policies, is continuance of business. These are the stipulated facts here and are alone sufficient to sustain the jurisdiction of the North Carolina Courts to render the four judgments under discussion. When to these are added the additional specific acts of local business done within the State after the attempted withdrawal (See Record, pp. 10-11, Par. 15-19) there can be no doubt that the company continued doing business.

It being settled that defendant was doing business in North Carolina, and subject to be sued in the courts of that State according to the statutory provisions relative to acquiring jurisdiction, it was immaterial where the cause of action sought to be enforced therein arose.

There are two elements necessary to authorize a court to render judgment. It must have jurisdiction (1) of the parties, and (2) of the subject matter. Where the cause of action arose is only material in determining whether the Court has jurisdiction of the subject of the action.

The courts of North Carolina acquired jurisdiction of the person of the defendant through service of process on the Insurance Commissioner. This is settled law here.

It is conceded that Wadsworth, the plaintiff, who recovered these four judgments in North Carolina, was at all times a citizen and resident of that State (fols. 36, 38, 40, 42, 43, 44, 46 and 47), and that the Superior Court, in which the same were recovered, is a court of general jurisdiction (p. 11, fols. 19-20).

By the statute of North Carolina that court had jurisdiction in actions brought against foreign corporations by *residents of that State* "*for any cause of action*" (fol. 20).

The court, therefore, had jurisdiction both of the parties and the subject of the action (see *Shields v. Life Insurance Co.*, 119 N. C., 380).

That latter was an action based upon a policy of insurance issued to a resident of Alabama by an Ohio corporation doing business in North Carolina,

and assigned to a resident of North Carolina; it was held that the Superior Court of North Carolina had jurisdiction.

It is not material, therefore, that the suits instituted by Wadsworth were based on contracts made by defendant with residents of states other than North Carolina and assigned to a resident of North Carolina. Under the stipulated facts, it must be conceded that the Superior Court had jurisdiction of such cause of action at the suit of a resident.

Defendant's whole argument in the Court of Appeals was upon the assumption that the said four suits were instituted in the North Carolina Court by non residents of that State. If such were the fact, it might well be argued that, under the statute, the Superior Court of North Carolina had no jurisdiction of the subject matter. The argument, however, is contrary to the stipulated facts here. It is stipulated that the plaintiff Wadsworth in these four Carolina suits was a *citizen and resident of North Carolina, and that the various claims were duly assigned to him before suit* (see fols. 35, 38, 39, 42, 43, 46). There is no evidence in this record that these assignments were collusive or fraudulent; nor is there any fact in this record tending to show that the various non-resident policyholders who sold and assigned these causes of action, retained any interest in the same. The facts in the record are that Wadsworth, a citizen of North Carolina at the time of the institution of these suits, was the sole party interested therein. If the assignments were fraudulent or collusive, that question could easily have been raised in North Carolina. The question presented here, therefore, is, could a citizen and resident of North Carolina avail himself of the statutory provisions of that State respecting the method of service of process on a foreign insurance company doing business in the State, in an action in which its courts concededly had jurisdiction?

It being shown that the company was doing business within the State at the time of the service of process, and that the Superior Court of North Carolina had jurisdiction of an action in favor of a resident of the State, based on a contract entered into outside the State, the only inquiry remaining is, was the service of process, pursuant to the statute, on a sufficiently representative agent? It is immaterial whether the agent served had *express* authority to receive the particular process. It is enough that he was an agent of the company for any purpose and was sufficiently representative in character (see *Life Ins. Co. vs. Spratley*, 172 U. S., 602). Under the decisions in the *Birch* and *Phelps* cases by this Court, it must be taken as settled that the Insurance Commissioner of North Carolina was the expressly authorized agent of the defendant to receive process at least in all actions based upon North Carolina policies at the time of the service of process here. Could it matter whether he had express authority to receive this particular process? The statutes of North Carolina gave him full power to receive process in all suits, and even admitting defendant's contention that his express authority to receive process on all suits except those based on North Carolina policies, was revoked, he still remained a sufficiently representative agent to receive service of process within the State. Taken in connection with the further fact of sending, as provided for in the statute, a copy of the process and notice thereof to the home office of the company and receipt thereof by the defendant, it must be admitted that one of the chief objects of all such kinds of service, namely, notice and knowledge on the part of defendant of the commencement of suit against it, is provided for (see *Spratley* case, 172 U. S., 613; *Pope* case, 87 N. Y., 140; *Heller* case, 70 N. Y., 223; *Case on Appeal*, fols. 135, 150, 164 and 180).

We do not admit that the attempted revocation was effective to revoke the Insurance Commissioner's power to receive process on any lawful action.

So long as the defendant continued to do business in the State, it will be presumed to have assented to be sued within the State by service on the Insurance Commissioner, and is estopped from showing either that it has not filed the requisite authority or that it has revoked it. In *Railroad Co. v. Harris* (12 Wall., 65) it is said:

"One of these conditions may be that it shall consent to be sued there. If it do business there, it will be presumed to have assented and will be bound accordingly." See also, *Erman v. Insurance Co.* (1 Fed. Rep., 71); *Berry v. Indemnity Co.* (46 Fed. Rep., 439); *Plate Glass Co. vs. The Fire Insurance Co.* (55 Fed. Rep., 27); *Old Wayne, &c., Co. v. Flynn* (66 N. E. Rep., 57); *Stewart v. Harmon* (98 Fed. Rep., 190); *Railway Co. v. Whitton* (13 Wall, 270-285); *Hayden v. Mills* (9 Fed. Rep., 270); *Wilson v. Hunter* (7 Fed. Rep., 455).

We submit, therefore, that the judgment of the learned Court of Appeals of New York, in so far as it refused to give full faith and credit to these four judgments of the State of North Carolina, was erroneous, in disregard of the plaintiff's rights under the Constitution, and should be reversed.

Let us pass now to the consideration of the second contention.

We claim that:

Even if it be assumed (arguendo) that the defendant company in good faith withdrew from North Carolina and ceased to do any business therein after May 18, 1899, it was still liable to be sued in the courts of North Carolina in any action or legal proceed-

ing, and the Insurance Commissioner was, at the time of the service of process therein, the agent of the defendant for the purpose of service in any action or legal proceeding of every nature of which the courts of North Carolina had jurisdiction.

By the terms of the statute and the power of attorney filed by defendant, the Insurance Commissioner's authority was to continue so long as the company had outstanding liabilities in the State (Rec., p.). That it had such liabilities at the time of service of process in the four cases in question is admitted (fol.). Hence, by the statute and the terms of defendant's agreement, the Commissioner had full authority to receive process.

But it is claimed by the defendant that a fair and reasonable construction of the Willard Act (the law of 1889) limits the right of the Commissioner of Insurance to receive process on behalf of defendant to suits on contracts of insurance entered into *prior* to the attempted revocation.

The answer is that there is no such limitation in the words of the act.

The statute states that a foreign insurance company seeking to do business in that State shall "appoint the Insurance Commissioner or his successor its true and lawful attorney, upon whom all lawful processes *in any action or* legal proceeding against it may be served, and therein shall agree that *any lawful process* against it which may be served upon its said attorney shall be of the same force and validity as if served on the company" (p. 5, fols. 8-9), and the power of attorney filed by defendant company contained the same provision (p. 6, fol. 10).

The same broad provision was contained in the prior laws of this State enacted in 1876 and 1883. The law of 1883 read, "*Any legal process affecting*

the applicant" (fols. 5-6), and that of 1876 read, "Any civil process" (fol. 4).

We submit that the policy of the State of North Carolina as shown in these acts is manifest—that so long as foreign insurance corporations should continue to do business or have outstanding liabilities therein, service of process "*in any action or legal proceeding*" of which the courts of that State had jurisdiction, could be made on such company by service on the Insurance Commissioner.

It is an unreasonable construction of such a statute to limit it to claims arising on policies made in the State of North Carolina prior to the attempted revocation.

Suppose a resident of South Carolina had taken out a policy in defendant company prior to the attempted revocation and subsequently became a resident and citizen of North Carolina, is it reasonable to hold that the statute has no application and affords no protection to him?

Assume a policy issued in New Jersey in favor of a resident of North Carolina as beneficiary, on the death of the policyholder, would the North Carolina beneficiary be without the statute, powerless to sue in the courts of that State?

Suppose that after the attempted revocation a policy had been issued and mailed in New York to a citizen of North Carolina, would he or his widow, the beneficiary, have no rights to sue thereon under this act? Yet this is the construction asked for by defendant here.

Is it reasonable to suppose the courts of North Carolina would so discriminate among its citizens?

We contend that in the absence of any express limitation in the statute, no such arbitrary, forced or illogical construction of this broad statute will be adopted here.

We submit, however, that the Courts of North Carolina have construed the statute broadly and held it to apply to all causes of action *owned by its*

citizens, no matter where the contract was entered into.

By rendering judgment in these cases the courts of North Carolina have, by necessary implication, construed the statute to mean that it clothed the Insurance Commissioner with power to receive process on *all claims* and was not limited to claims arising out of insurance contracts entered into prior to May, 1899.

Clearly the State of North Carolina had the right to prescribe such conditions as it saw fit before allowing a foreign corporation to do business within its borders.

Anglo-American Prov. Co. vs. Prov. Co., 169 N. Y., 506, 510.

Hooper vs. California, 155 U. S., 648.

The State had the power to make the statute and power of attorney broad enough to authorize the Insurance Commissioner of that State to receive process *in all actions of every nature of which* its courts had jurisdiction.

Aldrich vs. Blachford, 177 Mass., 371, and cases cited.

That such was its intention is shown by the broad words of the statutes and the practical construction of them by its courts.

Moreover, this Court has given a broad construction to the statute by holding that it applied to policies taken out *long prior* to its passage.

Furthermore, any such defense should have been raised in North Carolina. If defendant sought a construction of the statutes of that State more limited than the wording thereof would imply, it should have raised the question there; having failed to do so, it is concluded here by the judgment against it.

And finally as voicing such a purpose, we call attention to the Crag Act passed at the same session of the North Carolina legislature as the Willard Act (in question). By its terms all foreign insurance

companies were required to domesticate, thus establishing a permanent local forum. The argument of the Court of Appeals of New York that it was the limited purpose of such statutes to protect policyholders who had contracted on the faith thereof, is not accurate. The reported cases construing similar statutes show that they have a more extended mission. It is to protect all its citizens who *have claims against the company and give them a local forum to try them, that said act was passed.*

Decisions in accord with plaintiff's contention have been reached by the courts of other States and the Federal courts in construing similar statutes.

Youmans vs. Title Insurance Co., 67 Fed. Rep., 282.

Under the law of Massachusetts a foreign corporation, before transacting business in that State, was required to appoint the commissioner of corporations its attorney,

"upon whom all lawful process in any action or proceeding against it may be served and in such writing shall agree that * * * the authority shall continue in force so long as any liability remains outstanding against the company in this commonwealth" (Act Mass., 1884, Ch. 330).

In April, 1890, defendant, a foreign insurance company filed such power of attorney, following the words of the statute.

In March, 1891, the company withdrew from the State, transacted no further business therein and notified the Commissioner to that effect. Thereafter a suit was instituted by a citizen of New York against defendant company in Massachusetts, and process was served on the Commissioner. It appeared that there were outstanding liabilities of the company in the State.

Held (1) that the courts of Massachusetts had jurisdiction of action between non-residents, and (2) That the authority of the Insurance Commissioner

to receive process in such a suit continued so long as liabilities remained outstanding.

The Court, after holding that it had jurisdiction of suits between non-residents, said:

"This decision (referring to *Johnson vs. Ins. Co.*, 132 Mass., 432) places a non-resident plaintiff upon the same footing as citizens of Massachusetts with respect to suits brought against foreign corporations under the act of 1884. The defendant availed itself of the privilege of this law in April, 1890. So far as the present question is concerned it is immaterial when it ceased to do business in the State. The important inquiry is when it ceased to have any liability in the State, for so long as any such liability exists it has consented to be sued here. * * * I see no escape from the conclusion that the Court has jurisdiction of this case."

In *Johnson vs. Ins. Co.* (132 Mass., 432, the Court, in construing the above act, said:

"ITS OBJECT IS SIMPLY TO PROVIDE FOR SERVING UPON SUCH COMPANIES 'ALL LAWFUL PROCESS IN ANY ACTION OR PROCEEDING' AGAINST THEM. THE WORDS 'ALL LAWFUL PROCESSES IN ANY ACTION OR PROCEEDING' MUST BE HELD TO INCLUDE ALL ACTIONS WHICH MIGHT LAWFULLY BE BROUGHT AGAINST A COMPANY THUS HAVING A DOMICILE OR BUSINESS IN THIS COMMONWEALTH. IT IS ALSO TRUE THE MAIN PURPOSE OF THE STATUTE IS TO SECURE TO OUR OWN CITIZENS THE BENEFIT OF OUR LAWS AND TRIBUNALS IN REGARD TO CONTRACTS MADE WITH FOREIGN INSURANCE COMPANIES WHO DO BUSINESS IN THIS STATE, AND IT CONTAINS PARTICULAR PROVISIONS WHICH CLEARLY INDICATE THIS GENERAL PURPOSE. BUT IT IS TRUE OF ALL OUR STATUTES APPLICABLE TO OUR CITIZENS THAT THEIR PRIMARY OBJECT IS THE BENEFIT OF OUR OWN CITIZENS AND THE SECURITY AND PROTECTION OF THEIR RIGHTS. WE HAVE, HOWEVER, ALWAYS EXTENDED THE PRIVILEGES OF OUR LAWS TO NON-RESIDENTS, AND OPENED OUR COURTS TO THEIR LITIGATION, IF THE DEFENDANT CAN BE FOUND HERE (Anc. Chart., 91, 192; *Robert vs. Knights*, 7 Allen, 449, 452."

In the case just quoted plaintiff was a resident of Delaware; defendant was a New Jersey fire insurance corporation, doing business in Massachusetts.

The contract sued upon was made in *Delaware*, covering property there situated.

The only service of process was on the Massachusetts Commissioner. It is held the Massachusetts court had jurisdiction.

And in *Wilson vs. Fire Alarm Co.* (149 Mass., 24), in construing the same statute, the Court, of which Justice Holmes was then a member, said:

"There is no doubt, under the agreement made by the corporation in accordance with this statute, for the purpose of enabling it to do business within the commonwealth, that 'so long as any liability remains outstanding against the company in this commonwealth' the service made in this cause (*i. e.* on the Commissioner) is sufficient to enable the Court to render a personal judgment against the company which would be held valid in other jurisdictions as well as in this" (citing 18 How. (U. S.), 404; 96 U. S., 369; 106 U. S., 350; 129 Mass., 444). Similarly under an Indiana statute the same result was reached.

Mooney vs. Buford Mfg. Co., 72 Fed. Rep., 32.

The headnote reads as follows:

"The Indiana statute of 1883 makes it unlawful for any foreign insurance company to do business in that State until it has filed with the Auditor of State a copy of a resolution of its directors covenanting that in any suit against the company process may be served on its agents within the State 'with like effect as if such company was chartered, organized or incorporated within the State'; and further agreeing that such service may be made 'while any liability remains outstanding against such company in the State'; held, that a foreign insurance company which has complied with these requirements may be

validly served in the manner above prescribed not only in suits UPON OBLIGATIONS ARISING OUT OF BUSINESS DONE WITHIN THE STATE, BUT IN SUITS UPON CONTRACTS OF INSURANCE MADE AND PAYABLE IN OTHER STATES."

In its opinion the Court says:

"The clause in the Indiana statute 'while any liability remains outstanding against such company in this State,' like the corresponding phrase in the statute of Massachusetts, is a limitation only of the time within which the company may be bound by service upon its agents within the State, and NOT A RESTRICTION UPON THE CHARACTER OF SUITS IN WHICH PROCESS AGAINST IT MAY BE ISSUED."

See to same effect under a Pennsylvania Statute, *Darlington vs. Rogers* (36 Legal Int., 115).

The learned Court of Appeals of New York State in overruling this contention, based upon the wording of the statute, placed its decision on two grounds:

(1) "That the policy involved and voiced in statutes of this character was the determination upon the part of the State that it would not allow a foreign insurance company to exercise the privilege of doing business within its limits without securing to its citizens who might there be dealt with, an arrangement by which they might institute actions and enforce their contracts and policies at home and without being driven into some foreign state where the company might have its origin and principal place of business"; and

(2) "That neither the non-resident policy-holders nor the resident assignee had acted in reliance on the statute, hence the defendant was not estopped to revoke the power of attorney in question."

The answer to the first contention has already been made. The plain wording of the statutes of North Carolina and the power of attorney disclose a contrary policy. Had such been the policy of the State, it would have by express words limited the

scope of the power of attorney to claims arising out of the business done within the State. The fact that it did not, voiced the State's determination to hold the foreign insurance company subject to the jurisdiction of its courts at the suits of all its citizens. *Expressio unius exclusio alterius.*

Further, that such is not the general policy of such statutes in other states is shown by the decisions already quoted.

The second argument involves a confusion between the parties to the power of attorney and its beneficiaries.

The power of attorney was a contract between the State and the insurance company. The insurance company appointed the Commissioner of Insurance its continuing agent for the receipt of process in all actions of every nature and description. It was to continue so long as it had outstanding claims against it in the State.

The *quid pro quo* was the State's permission to come into the State and do business.

The company has done so. *It has reaped the full harvest of that business, and at the times in question was enjoying the fruit.* Will it be permitted to repudiate its plain contract on the ground that the particular citizen of the State of North Carolina who seeks to hold it cannot establish an estoppel or reliance thereon? To require a plaintiff in each case before he could sustain the authority of the Commissioner to establish an estoppel would be to render nugatory the provisions of this remedial and salutary statute for service of process.

Is the power of attorney in question subject to the application of the old doctrine that one not coupled with an interest is revocable? We submit not.

This is a contract between a sovereign State, acting as the representative of all its citizens, and a corporation, by which the corporation has obtained a lucrative business.

This alone is sufficient to sustain the power of attorney and forbid its revocation.

VIII.

The judgment of the Court of Appeals of the State of New York in so far as it reversed the judgment heretofore awarded in favor of the plaintiff by the sum of \$8,792.42, with interest from May 2nd, 1902, should be reversed, and the plaintiff awarded judgment against the defendant for the full amount claimed, including the said sum of \$8,792.42, with interest from May 2nd, 1902.

Respectfully submitted,

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Supreme Court of the United States.

WILSON R. HUNTER,
Plaintiff in Error,

AGAINST

MUTUAL RESERVE LIFE INSUR-
ANCE COMPANY,
Defendant in Error.

October Term, 1910.
No. 39.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

By consent of the Defendant's counsel, and subject to permission of the Court, the Plaintiff in Error files this brief in reply.

STATEMENT.

Certain arguments advanced by defendant may require examination. By way of preface to this, we may restate the plaintiff's position as elaborated in the main brief.

We urged that, as insurance does not fall within the category of commerce, a State has the arbitrary power to prohibit a foreign corporation from negotiating and per-

forming contracts of insurance within her confines, (Points I, II, III, Main Brief); that, as an incident of the power to exclude, is the authority to prescribe conditions, (Point IV) which, if accepted, are binding on the foreign corporation (Point V). That one of the antecedent conditions for a foreign insurance company to do business in North Carolina, as required by the Willard Act (Record, p. 5, Act of 1889), was the appointment of the State Insurance Commissioner as attorney upon whom "*all lawful process in any action or legal proceeding against it may be served*" (p. 6, fol. 10, to continue "*in force and irrevocable so long as any liability of said company remains outstanding in the State.*" (Rec., p. 6, fol. 10). We further contended that, as the Defendant Company had accepted these conditions, filed such a power of attorney, and done business in the State, the authority of the Insurance Commissioner to accept process for it continued (1) so long as it was "*found*" within the State engaged in business, or (2) if it ceased to do business, then so long as it had liabilities outstanding in the Commonwealth. (Point V.) It was then argued that, on the facts in the Record, the Defendant persisted in doing business within the State, and was so found at the time of the service of process in question (Point VI, p. 16-31). Hence it was estopped to question or revoke the Insurance Commissioner's authority to receive the writ for it, and its purported revocation was ineffective. And finally we claimed that, even if it were not as a fact found in business in the State, still it was *found* there for the purpose of all suits of which the North Carolina Courts had jurisdiction, because both by the statute and by the express words of its contract with the State, it had agreed to be found therein, so long as it had liabilities outstanding therein (a conceded fact, p. 9, fols. 16-7).

Let us turn to the Defendant's contentions.

POINT I.

THE DEFENDANT IN ERROR DOES NOT MEET THE CONTENTION, THAT AS THE INSURANCE COMPANY CONTINUED TO DO BUSINESS WITHIN THE STATE, THAT FACT PRECLUDED IT FROM REVOKING THE POWER OF ATTORNEY TO THE INSURANCE COMMISSIONER.

The learned counsel for the Defendant in Error do not attempt to avoid the first argument so advanced. They do not seriously argue that, on the facts in this record, and the decisions of this Court in the Spratley (172 U. S., 602), Phelps (190 U. S., 147) and Davis (213 U. S., 245) cases, the Defendant Company did not continue doing business in North Carolina after its attempted revocation. But they maintain that as the power of attorney was by its inherent nature, and by a fair construction of the statute, revocable except as to citizens who, in reliance on it, had entered into contracts of insurance, the question whether the Defendant continued doing business in North Carolina in violation of law, is immaterial. Their reasoning proceeds in this wise: The power of attorney was revocable or irrevocable. If revocable, then whether the company continued doing business in the State has no bearing on the issues, because the process was not served on an agent of the Defendant. If irrevocable, then, it is likewise immaterial whether the company continued its State business, because jurisdiction was obtained by consent. (Defendant's Brief, p. 17).

The argument being reduced to this dilemmatic form, counsel proceeds to establish that the power of attorney was *revocable* by its nature (Defendant's Brief, p. 10), and by a fair construction of the Willard Act (Brief, p. 12), except as to local policy holders. It is easy to expose the sophistry concealed in such reasoning.

Counsel covertly assumes in his favor the whole point of the argument. He assumes in advance that the power of attorney was revocable, even though the company continued to do business in the State.

It is quite true that the power of attorney was revocable or irrevocable. But it was irrevocable for another reason than because of the statute and its express words, that continued its life until all liabilities were satisfied. *It was irrevocable while the company continued in business in the State.*

The Plaintiff maintains that a foreign corporation cannot, as a price of admission to a State, consent to being sued there in all actions of which the Courts have jurisdiction, and appoint a State officer to receive process for it, and then while continuing to do business revoke the appointment.

This is the law, irrespective of any stipulation to that effect in the letter of appointment or in the statute.

It is true because a foreign corporation cannot be found within a State, yet dispute the provisions as to the method of obtaining service of process on it. If the arguments of counsel were sound, it would put a premium on the Defendant's violation of the law of North Carolina. There would be no possible way of commencing an action against an unlicensed foreign corporation that had revoked the Insurance Commissioner's authority, yet continued doing business in the State in disregard of the law. In other words, such a doctrine would reward such foreign com-

panies as refused to obey the law, by shielding them from the enforcement of all liabilities in the courts of North Carolina.

A similar argument was met and answered by this Court in *Henrietta Mining Co. vs. Johnson*, 173 U. S., 224; and also in *State vs. Insurance Company*, 67 Wise., 624, quoted with approval by this Court.

An illustration will expose the fallacy of Defendant's position. Assume that the Defendant Company continued doing business in the State of North Carolina, with local offices and agents therein, soliciting new business as theretofore. Let it further be assumed that while such business continued, it had attempted to revoke and cancel the power of attorney of the Insurance Company, yet persisted in business, would it be seriously maintained that this revocation was effectual? Would it be for an instant argued that thereafter service of process on this State official in any action of which the North Carolina courts had jurisdiction was not sufficient to sustain a judgment *in personam*? We apprehend that even the learned counsel for Defendant would not seek to posit this.

If not, then the question of whether the Defendant continued in business in the State after the purported revocation, is vital to the solution of the question before the Court, because so long as that business continued, the authority of the State Commissioner to receive process for it continued.

It is hardly necessary to point out that this was the underlying principle of the decisions of this Court in the *Spratley*, *Phelps* and *Davis* cases.

The method of procuring jurisdiction and the officer or agent of the corporation to whom notice of the suit is to be given lie wholly in legislative enactment. There is no limi-

tation on the power of each State to define the class of such agents, except that it must be so far representative as to bring home to the company notice of the suit.

It has never been doubted that the designation of a State official whose public duty it is to transmit notice is a proper agent.

If it lay wholly within the power of the corporation to select the class of its agents who should receive process, it could, by appointing an agent not to be found, readily avoid all suits against it. As the Court said in *St. Clair vs. Cox* (106 U. S. 350), "the moment the boundary of the State is passed difficulties arise. It is not so easy to determine who represents the company there, and under what circumstances service on them will bind it."

If the corporation is a domestic one, the law designating the agent to receive process attaches to it because it is born under it. If, contrariwise, it is a foreign corporation, the law attaches because of the fact that it is *found in the State*, i. e., *doing business there*.

These principles are embedded in our law. They found expression in the decisions of this Court in the *Spratley*, *Phelps* and *Davis* cases. In each of these cases this Court found as a fact that the Insurance Company continued to do business within the State after its apparent withdrawal or expulsion. Hence it was held to be within the grasp of the State law defining the agent on whom process was to be served.

In the *Spratley* case (172 U. S., 602), it was held that service of process on an agent who was sent into the State to investigate and adjust a death loss, was sufficient to sustain a *personal judgment* because he came within the class designated by the State law, even though he had no express authority. It is to be noted that this service was after the com-

pany had ceased issuing new policies in the State, withdrawn its agents, and had so notified the State officials.

In the Davis case (213 U. S., 245) it was held that service on a physician sent to examine the deceased body, who had authority to settle the claim was sufficient even though he had no express authority to receive process.

And in the Phelps case (190 U. S., 147) it was held that service on the State official was sufficient, even though his authority was expressly revoked by the corporation.

In each of these cases there was no estoppel in favor of the policy holder, because there was no provision either in the State statutes or in any agreement between the State that either the State Commissioner's authority or that of any local agent should continue a day after the company withdrew from the State. By no possibility could the policy holder, who was the Plaintiff in each of these cases, be said to have relied on the fact that he could thereafter continue to sue the Company in his home State.

Every element of an estoppel was lacking.

In the Spratley and Davis cases it was merely a chance agent who was sent into the State for a limited purpose. This fact alone could not sustain jurisdiction, any more than service on an officer of a foreign company who was traveling in the State for pleasure.

It was the added fact in each case that the company was at the time of service of process, doing other business, a continuous business in the State, and that it was found in the State, that made the service of process on the agent valid even though he had no express authority. Had the companies not been doing business, the fact that the agent had not *express* authority to accept service would have been fatal, because jurisdiction then would depend on consent.

But, as the company was doing business in the State, and this Court so found on the identical facts in the record here, express authority was not a prerequisite. The Company was subject to the laws of the State, and service on it could be made *in invitum*.

The foreign company cannot be heard to question the agent's or State official's authority while it continues business. As this Court said in *Railroad Co. vs. Harris*, 12 Wall., 65: "*If it do business there, it will be presumed to have assented [i. e., to be sued], AND WILL BE BOUND ACCORDINGLY.*" In the case last cited, it is to be noted in passing that the cause of action in fact arose outside of the jurisdiction where the foreign corporation was sued, i. e., District of Columbia.

And in the *Sprately* case (172 U. S., 614), this Court stated, "*The consent [to receive service] was implied because of the company entering the State and doing business therein subject to the provisions of the Act.*"

In the *Ehrman* case (1 Fed. Rep. 471), the Court on a similar question said:

"That the stipulation was not in fact filed with the Auditor [State official] is of no consequence, if the company has done those things which imposed upon it the obligation and duty to file it. The law deduces the agreement on the part of the Company to answer in the courts of this State on service made upon the Auditor, from the fact that it is doing business in the State, and the presumption from that fact, of assent to service in the mode prescribed by the statute is conclusive and no averment or evidence to the contrary is admissible to defeat the jurisdiction."

Other cases establishing the same doctrine are cited in Plaintiff's Brief, (p. 33).

Thus we see that all lines of reasoning bring us to the same question. Was the Defendant Company doing business in the State of North Carolina at the time of service of process? That it was we submit has been fully shown [Plaintiff's Brief, Point VI].

We may enforce this contention by an excerpt from the opinion of Mr. Justice Day in the Davis case (213 U. S., 246, at 255). It is there said:

"Was the Defendant doing business in the State of Missouri? The record discloses, and the court has found, that it had other insurance policies outstanding in the State of Missouri. Upon these policies undoubtedly premiums were paid, and it was the right of the company to investigate losses thereunder, to have an examination of the body of the deceased in proper cases, and to do whatever might be necessary to an adjustment or payment of any loss. The record shows that the company sent Dr. Mason to Fayette to investigate the loss sued for in this case, and later, and at the time of the service of the process, Mason was in Missouri with full authority to settle the loss in controversy.

"Previous cases in this Court have not defined the extent of the business necessary to the presence of a foreign corporation in the State for the purpose of a valid service; it is sufficient if it is doing business therein. We are of opinion that the finding of the Court in this case is supported by testimony, and that the corporation was doing business in Missouri."

The Defendant's counsel seeks to avoid the force of the decisions of this Court in the Spratley, Phelps and Davis cases by contending that there are degrees of "doing business," that a foreign corporation may be so far doing business and found in a State as to local policy holders, but not "doing business" as to other claimants. (See Defendant's Brief, p. 18-19). In other words, counsel would make the nature of Plaintiff's claim the test of whether the company was or was not doing business and found within the foreign State.

We submit that such a distinction is illogical and wholly illusory. It would lead to all sorts of absurdities and confusions. For example, a plaintiff is the beneficiary of two policies of insurance, one taken out in North Carolina, and one in New Jersey. One suit is brought in the courts of North Carolina on both these policies; on the first cause of action it is found as a fact that the company was doing business at time of service of process, and on the second cause by the same plaintiff against the same defendant, in the same suit, before the same court, on the same evidence, it is held that the company is not doing business.

We submit this Court did not intend to announce any such doctrine.

Passing now to the second argument advanced by counsel. On this we submit

POINT II.

THE POWER OF ATTORNEY WAS NOT INHERENTLY REVOCABLE (1) BECAUSE IT WAS GIVEN FOR AN EXECUTED CONSIDERATION PASSING FROM THE STATE TO THE DEFENDANT, AND (2) BECAUSE BY ITS EXPRESS TERMS ITS TERM OF LIFE DID NOT EXPIRE WHILE OUTSTANDING LIABILITIES CONTINUED.

The claim of the Defendant Insurance Company is that all powers of attorney not coupled with an interest are revocable, (citing various authorities).

When examined critically, these authorities do not sustain the broad proposition claimed. The true statement of the rule is that, while a power of attorney is ordinarily revocable at will, yet when it is coupled with an interest or *given as security, or as part of a contract, or for a valuable consideration which the law deems sufficient to uphold an executory contract, or when it is given to a public officer of the State for the protection of its citizens*, it is irrevocable.

Meehem on Agency, (Section 232), reads as follows:

“Where the State requires the creation and maintenance of an agency to subserve some purpose in which its citizens may have an interest, the authority of an agent appointed in pursuance of such a requirement cannot be revoked at the mere will of the principal, unless for the appointment of another in his place while the exigency continues against which the statute was intended to provide. *Thus, where a statute required any foreign insurance company doing business within the State to appoint an agent within the State upon whom process against the Company might be served, it was held that the company, having appointed such an agent, could only revoke his authority upon the appointment of another.*”

Another authority cited by Defendant is *Hunt vs. Rousmainer* (8 Wheaton, 174). It was there held that a power of attorney not coupled with an interest is revoked by *the death of the principle*. But Chief Justice Marshall, in writing the opinion in that case, was careful to state the circumstances under which a power of attorney is irrevocable, using the following words:

“The general rule, therefore, is that a letter of attorney may, at any time, be revoked by the party who makes it, and is revoked by his death. But this general rule, which results from the nature of the act, has sustained some modifications. Where a letter of attorney *forms part of a contract, and is security for money, or for the performance of any act which is deemed valuable*, it

is generally made irrevocable in terms, or if not so is deemed irrevocable in law. Although a letter of attorney depends from its nature on the will of the person making it, *AND MAY IN GENERAL BE RECALLED AT HIS WILL, YET IF HE BINDS HIMSELF, FOR A CONSIDERATION, IN TERMS OR BY THE NATURE OF HIS CONTRACT, NOT TO CHANGE HIS WILL, THE LAW WILL NOT PERMIT HIM TO CHANGE IT.*

“Rousmainer, therefore, could not during his life, by any act of his own, have revoked this letter of attorney.”

The other authorities establish the same doctrine, that a power of attorney given for a valuable consideration or as security is irrevocable.

McGregor vs. Gardner, 14 Ia., 326.

Ewel's Evans Agency, page 110, note 1.

2 Kent's Commentaries, 643.

Story on Agency (9th Ed.), p. 587.

Terwilliger vs. Railroad Co., 149 N. Y., 87.

It thus appears that the authorities are unanimous in holding that a power of attorney either coupled with an interest or *created by a contract for a valuable consideration* moving from the agent cannot be revoked at the will of the principal. Applying these principles to the facts here, we see that the company, for a valuable consideration and as part of a contract by virtue of which it obtained the valuable privilege of doing business in the State of North Carolina, created the power of attorney to the Commissioner of Insurance of that State to receive process so long as any outstanding liabilities remained in that State.

This authority and power of attorney was required from the Insurance Company for the benefit, security and protection of all the citizens of North Carolina, and, under the authorities cited, was irrevocable for that reason.

See Collier vs. Mutual Reserve Ins. Co., 119 F. R. 619.

Counsel asks, "What did the State contract to do?" We answer, it agreed to permit this Defendant corporation to do business within its borders, and it carried out this agreement. The company availed itself of this privilege. That was the consideration. It mattered not how long the business continued. The record shows that Defendant availed itself of this privilege and continued to do so for many years. "*From prior to March 1883,*" (Record, p. 3), *to May 17, 1899* (p. 7), it was admittedly in the State doing an active insurance business. (Record, p. 9, fol. 16.), and during all this time the Defendant obtained this valuable privilege by its solemn agreement "that a State official could accept service for the company" even after it had ceased to do business, "*so long as liabilities remained outstanding in this State.*" (Laws 1876, p. 2-3, fol. 4-5; Laws 1883, p. 3-4, fol. 5-7; Laws 1889, p. 4-7).

Can it be said that there is not a sufficient consideration moving from the State to the company to enforce its contract?

The very decisions of the North Carolina Courts construing this statute cited by Defendant's counsel point out this fact. It is said (Moore vs. Mutual Reserve, 129 N. C. 31, Rec. p. 15, fol. 26). "*It (power of attorney) was contractual in its nature, was given upon consideration that the Defendant should have the right to carry on its business in this State.*"

We submit, on the plainest principles of common law and policy, the irrevocability of the power should be sustained.

The consideration to support a contract is not necessarily continuing in its nature.

The admission of the corporation to the State to do business is sufficient to sustain the company's agreement to domesticate or preserve a local forum for suit until a certain period has elapsed, even though in the interim the business

of the company ceased. The Phelps case established this. A unilateral contract is as valid in law as a bilateral.

A word may be said here as to the Craig Act. Counsel would seem to imply that the State of North Carolina had in some way withdrawn its permission to the Defendant to do business therein. No such state of facts exists here. The Defendant, for reasons of its own, voluntarily withdrew from further new business in the State, just as the insurance company did in the Spratley case.

The Craig act has no bearing on this controversy.

The point so raised seems to be that, assuming that the power of attorney filed by Defendant on April 13, 1899 was irrevocable so long as it had existing liabilities in that State, the State, by passing the Craig act, abrogated this contract and absolved the Defendant from its obligation thereunder. This act (ratified February 10, 1899) provided that it should be in force from and after its ratification. It provided that every foreign insurance company doing business in North Carolina on and after the 1st day of June, 1899, should become a domestic corporation of that State under certain penalties. (Record, pp. 7-8).

If there existed a valid contract between the State and insurance company for the benefit of a policy holder, the Craig act could have no effect upon it.

But, the whole argument proceeds upon a false assumption of fact. The Craig act was not passed by the legislature *subsequent* to the contract between the state and the insurance company, but passed and ratified *prior* thereto, i. e., on February 10, 1899. The power of attorney was not filed by Defendant until April, 1899, some two months after the Craig act was ratified and in effect.

In filing its power of attorney and entering into the agreement with the state that such power of attorney should be irrevocable, Defendant did so with full knowledge of the provisions of the Craig act. It is conclusively presumed to have entered into this contract with full knowledge of and subject to the provisions of that act.

Mutual Life Ins. Co. vs. Phinney, 178 U. S., at p. 327.

The Willard act, under which the power of attorney was filed, became effective upon its ratification, March 6, 1899. It provided specifically that "any other laws and clauses of laws in conflict with this be and the same are hereby repealed." The power of attorney was filed by Defendant on April 17, 1899. On this record it might be plausibly urged that in so far as any of their provisions conflicted, the Craig act was repealed by the Willard act. Any argument based by counsel for Defendant on the Craig act falls; it is plainly an afterthought; Defendant was not excluded from the state thereby, but was merely required to file in the office of the Secretary of State a duly authenticated copy of its charter in order to enable it to continue business in the state. The act declared that the result of this should be to make the company a domestic corporation. The statement that the company was "driven" from the state, is hardly correct. The real reason of the attempted withdrawal is apparent; it was to avoid the payment of judgments similar to that in the case of Strauss vs. Mutual Reserve (126 N. C., 971), decided at trial term, February 12, 1899. Under the authority of that case, the insurance company became liable to all its North Carolina policy holders by reason of its breach of the contracts of insurance theretofore entered into with citizens of the state. Its attempted withdrawal was plainly to avoid the effect of the Strauss decision.

It appears from the opinion of the Supreme Court of North Carolina in the case of Biggs vs. Mutual Reserve (128 N. C., 5, at p. 7), that appellant company did attempt to

domesticate under the terms of the Craig act. (p. 16, fol. 28).

Turning to the other contention advanced by Defendant's counsel, that the statute and its accompanying power of attorney were enacted for the protection of citizens who had controversies growing out of the business done in North Carolina, i. e., local policyholders, we submit that even if this was the primary motive, it does not follow that the sole motive or the act is so confined. Its broad wording indicates a more extended purpose, to afford to all the citizens of North Carolina a local forum to litigate their controversies, wherever arising. The words used in the act are most comprehensive; they are "*process in any action or legal proceeding.*"

It is incredible that the legislature in using these broad phrases should have intended to limit the authority to controversies arising on local contracts.

See *West vs. City Council*, 2 Peters, 449, 464.

There is no law forbidding a State opening its Courts to controversies based on contracts made elsewhere or between non-residents. Most of the States permit suits on causes of action arising elsewhere. The State of North Carolina is among this number. It expressly permits suit by a resident against a foreign corporation on any cause of action. Why then should the legislature not make the Insurance Commissioner's authority co-extensive with the jurisdiction of its Courts. The act so says. The agreement between the State and the Defendant so states. Prior legislation voiced such an intention (Record, p. 2, fol. 4, p. 5, fol. 6). The Craig act itself, which required foreign insurance corporations to domesticate, is but another evidence of the State's uniform policy of compelling insurance companies doing business within its borders to submit all controversies of every sort, wherever arising, between it and the citizens of the State to the

local Courts. What, we ask, is there unjust or inequitable in requiring this? Why could not the State afford a local forum to all its citizens equally, and not to the limited few who dealt with the corporation? The plain words of the statute compel this construction.

We submit

POINT III.

**THE JUDGMENT OF THE COURT OF
APPEALS OF NEW YORK SHOULD BE
REVERSED AS PRAYED FOR.**

Respectfully submitted,

PAUL ARMITAGE,

Counsel for Plaintiff in Error.

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 39.

WILSON R. HUNTER,

Plaintiff-in-Error,

vs.

MUTUAL RESERVE LIFE INSURANCE COMPANY,

Defendant-in-Error.

Error to the Supreme Court of the State of New York.

BRIEF FOR DEFENDANT IN ERROR.

WM. HEPBURN RUSSELL,

FRANK H. PLATT,

Of Counsel for Defendant-in-Error.

New York:

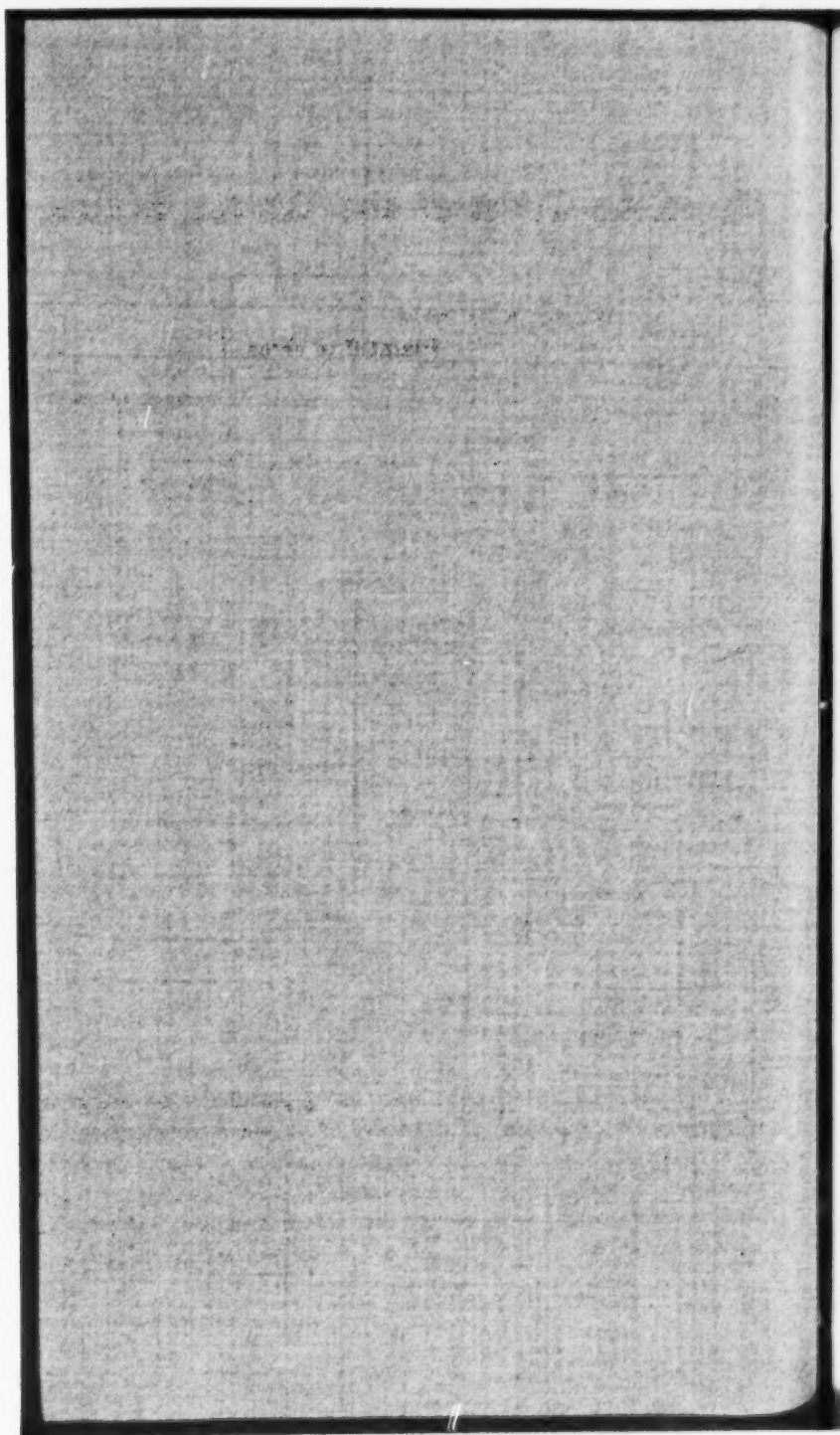
Stillman Appellate Printing Co.

1910.

Office Supreme Court, U.S.
FILED.

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JAMES H. McKENNA



Supreme Court of the United States.

WILSON R. HUNTER,
Plaintiff in error,

vs.

MUTUAL RESERVE LIFE INSURANCE
COMPANY,
Defendant in error.

October
Term,
1910.

No. 39.

BRIEF FOR DEFENDANT IN ERROR.

Statement.

This case comes before this Court upon writ of error to review a decision of the Court of Appeals of New York (Record, p. 44, fol. 77 *et seq.*), which denied the right of the plaintiff to enforce against the defendant in New York four judgments which had been rendered against the defendant, upon its default in appearing by the Superior Court of North Carolina, and which had thereafter been assigned to the plaintiff (Record, p. 21, fol. 35; p. 23, fol. 39; p. 25, fol. 43; p. 28, fol. 47).

These four judgments were recovered by one Enoch Wadsworth, a resident of North Carolina, who was the assignee, in each case, of the alleged cause of action sued upon, and who in each case joined with himself as co-plaintiff, the assignor of such cause of action. The causes of action were identical in their nature, each being for alleged breach of a contract of insurance, in increasing the assessments thereon, the damages sought to be recovered being the amount of such increased assessments (Record, p. 20, fol. 35; p. 23, fol. 38; p. 25, fol. 42; p. 27, fol. 46).

The assignors of three of these causes of action were citizens of the State of New York, and the contract, the breach of which was alleged, was in each case made in the State of New York, long prior to the year 1899. The assignor of the fourth alleged cause of action was a citizen of the State of New Jersey, and her contract with the defendant was likewise made long prior to the year 1899 (Record, p. 19, fol. 32; p. 21, fol. 36; p. 23, fol. 39; p. 26, fol. 43).

The several assignments were made to Wadsworth in December, 1901, and January, 1902, respectively (Record, p. 20, fol. 35; p. 23, fol. 38; p. 25, fol. 42; p. 27, fol. 46), and action was begun in each case upon January 20, 1902.

Alleged service of process in each action was made by delivering a copy of the summons to the Insurance Commissioner of North Carolina, who at once forwarded the same to the defendant in New York (Record, p. 19-27). The defendant did not appear in any of said actions, and judgment was entered against it by default (*Idem*).

There was a fifth cause of action upon which judgment was rendered against the defendant, but as that arose upon a contract of insurance made by the defendant with a resident of North Carolina while duly authorized to do and actually doing business in North Carolina, the Court of Appeals of New York sustained the plaintiff's right to recover thereon (Record, p. 16-19; p. 44, fol. 78). This fifth cause of action is not in controversy here.

The Court of Appeals denied the plaintiff's right to recover in New York upon the four other judgments, upon the ground that the Superior Court of North Carolina did not, at the time of the entry thereof, have jurisdiction of the defendant corporation (Record, p. 44 *et seq.*).

The facts upon which that question had to be determined are as follows:

The defendant in error was a corporation organized under the laws of the State of New York to carry on the business of life insurance upon the co-operative or assessment plan (Record, p. 2, fol. 3). It began to do business in North Carolina in 1883, having first complied with the laws of that State, and

been duly admitted to transact business there (Record, p. 3, fol. 4; p. 4, fol. 6), and continued to carry on such business until May 17, 1899 (Record, p. 9, fol. 16).

By the North Carolina Act of 1899, called the Willard Law, Chapter 54, Laws of North Carolina of 1899, there was established a new department of the government of that State, and a new State officer was created, called the Insurance Commissioner, and it was provided that no foreign insurance company should be admitted and authorized to do business until it should, by an instrument filed in his office, appoint the Insurance Commissioner, its attorney for the service of legal process against it, and therein should agree that any such process thus served should be of the same force as if served on the Company, and that the authority thereof should "continue in force irrevocable so long as any liability of the Company remains outstanding in this Commonwealth." This last statute went into effect March 6, 1899 (Record, pp. 4-5, fols. 7-9).

On or about April 13, 1899, the appellant Company, desiring to continue to transact business in North Carolina, executed and filed with the Insurance Commissioner a power of attorney in the language of the last mentioned statute, and thereupon, upon payment of the statutory fee, the Insurance Commissioner, pursuant to the Willard Law of 1899, issued to this Company a license, empowering it to make in that State contracts of life insurance on the assessment plan during the ensuing year, that is, the insurance year ending April 1st, 1900 (Record, p. 6, fols. 10-11).

By another statute enacted in the same year, 1899, called the Craig Law, the State of North Carolina withdrew the comity by which foreign insurance companies and other specified companies had been permitted to enter that State and transact business under certain conditions, and declared as its general law that, after June 1st, 1899, no foreign insurance company, or other such company, should be permitted to transact any business in North Carolina upon any terms whatsoever. By this last mentioned statute, Chapter 62 of the Laws of North Carolina of 1899 (Record, p. 78, fols. 12-14), it was provided that every such corporation of the various classes, including insurance companies, organized under the

laws of any State other than North Carolina, desiring to own any property, to carry on business, or to exercise any corporate franchise whatsoever in that State, should become a domestic corporation of North Carolina, in the manner prescribed by the statute, upon compliance with which any such corporation should become a corporation of North Carolina the same as if originally created by the law of that State. It was enacted that after June 1st, 1899, it should be unlawful for any such corporation to do business or attempt to do business in that State without having fully complied with this Act, and any foreign corporation of the classes mentioned in the Act was forbidden to sue in the Courts of North Carolina, to enter into any contract in that State, or to enforce any contract, whether theretofore or thereafter made by it, unless before June 1st, 1899, it became a domestic corporation under and by virtue of the Laws of North Carolina. Various penalties were provided for any violation of this last named Act.

The appellant Company did not comply with the provisions of the Craig Law or become a domestic corporation of North Carolina. On the contrary, although during the previous month it had applied for and obtained a license to do business in that State during the ensuing year, yet on the 17th day of May, 1899, the appellant Company, by its Board of Directors, adopted preambles and resolutions reciting the substance of the Craig Law, and that it was neither wise nor prudent for the corporation to comply therewith, and resolving to withdraw from the State of North Carolina, to cease the transaction of business therein, to terminate the employment of all agents in its employ in that State, and specifically revoking the appointment of Young, Insurance Commissioner, as its attorney for the service of process (Record, p. 8, fol. 15). The above resolutions were filed in the office of Young, Insurance Commissioner, May 20, 1899 (Record, p. 9, fol. 16).

On May 18, 1899, this Company withdrew all its agents from North Carolina, and since that date has had no agent in North Carolina (Record, p. 9, fol. 16).

The Company had policies or contracts of insurance remaining in force in North Carolina (Record, p. 9, fol. 16). After May 18, 1899, premiums or assessments upon such policies,

made before May 17, 1899, and outstanding in North Carolina, were paid to the Company by being remitted to it direct, by mail, by the policyholders, at its home office in the City of New York, where, by the terms of the policies, such premiums were in each case payable (Record, p. 9, fol. 16). After May 18, 1899, where death losses occurred in North Carolina under policies issued before May 17, 1899, the Company has paid them to the person entitled to receive them, by mailing a check for the amount of the loss from the Company's home office in the City of New York, where, by the terms of the policies, the loss was payable (Record, p. 10, fol. 17).

The record sets forth four isolated transactions of the defendant in the State of North Carolina subsequent to May 20, 1899. The first of these transactions consisted of the rewriting for \$2,000 on October 17, 1899, of a policy of insurance originally issued in 1886 for \$5,000 and the mailing of the new policy from its home office in New York to the assured in North Carolina (Record, p. 11, fol. 19). The second transaction was the sending to a bank in North Carolina of a check in payment of a policy issued prior to May 17, 1899, to be delivered upon receipt of certain unpaid assessments (Record, p. 10, fol. 18). The third transaction was the adjustment in North Carolina of a loss upon a policy issued in Washington, D. C. The beneficiary meanwhile had removed to North Carolina and the adjuster followed her there. This was in June, 1902 (Record, p. 10, fol. 17). The fourth transaction was the adjustment in August, 1902, by the aid of an attorney employed for the purpose of a claim upon a policy written in North Carolina prior to May 17, 1899 (Record, p. 11, fol. 18).

It will be observed that the first and second transactions referred to were prior, while the third and fourth were subsequent, to the beginning of the actions in which these judgments were obtained. It was claimed that these transactions indicated that the defendant corporation was still at that time doing business in North Carolina. The question in this case, however, was not whether the defendant was doing business in North Carolina, but whether the Superior Court of North Carolina had jurisdiction of the person of the defendant corporation at the time it rendered the judgments. The defendant

may or may not have violated the law of North Carolina in doing these several acts. That was not material. The judgments in this case were not enforceable in New York unless the Court which rendered them first obtained personal jurisdiction of the defendant. The Court of Appeals of New York passed upon that question and decided that it did not. Did that ruling deny to plaintiff any right or privilege arising under the Constitution of the United States is the question before this Court.

FIRST POINT.

The judgments rendered by the Superior Court of North Carolina were not enforceable in New York unless that Court had jurisdiction of the person of the defendant. To obtain such jurisdiction it was necessary that process be served upon an authorized agent of the defendant corporation.

It is fundamental that in order to entitle a judgment to be enforced in another State by virtue of the provisions of Article IV, Section 1, of the Federal Constitution, the Court which rendered the judgment must have acquired jurisdiction of the person of the defendant. *Thompson v. Whitman*, 18 Wall., 457; *Huntington v. Attrill*, 146 U. S., 657, 685.

And the Court which is called upon to enforce the judgment is not concluded by anything in the judgment, but must determine for itself whether personal jurisdiction was in fact acquired. *Germania Savings & Loan Society v. Dormitzer*, 192 U. S., 125; *National Exchange Bank of Tiffin v. Wiley*, 195 U. S., 257, 269-270.

To confer jurisdiction upon the courts of a State to render a judgment against a foreign corporation, the general rule is that the two elements must exist that service be made upon an agent of the company whom the law will imply is authorized

to receive service of process, and that the corporation is engaged in doing business in such State. *Pennoyer v. Neff*, 95 U. S., 714; *St. Clair v. Cox*, 106 U. S., 350; *Goldey v. Morning News*, 156 U. S., 518; *Barrow Steamship Co. v. Kane*, 170 U. S., 100, 111.

In *Conn. Mutual Ins. Co. v. Spratley*, 172 U. S., 602, it is said: "In a suit where no property of a corporation is within the State, and the judgment sought is a personal one, it is a material inquiry to ascertain whether the foreign corporation is engaged in doing business within the State; *Goldey v. Morning News*, 156 U. S., 519; *Merchants' Manufacturing Co. v. Grand Trunk Railway Co.*, 13 Fed. Rep., 358; and if so, the service of process must be upon some agent so far representing the corporation in the State that he may properly be held in law an agent to receive such process in behalf of the corporation"

The converse of this proposition is equally true. If service be made upon an official of the corporation who is found in the State, it will be wholly ineffective to confer jurisdiction over such corporation, unless the corporation is doing business in the State. *Conley v. Mathieson Alkali Works*, 190 U. S., 406; *Geer v. Mathieson Alkali Works*, 190 U. S., 428.

The only modification which has been made in the above stated rule is that where the corporation has done business in a State and has incurred liabilities to residents of the State, and was, as a condition of being permitted to do such business and to enter into contracts in the State with the residents thereof, required to designate an agent in the State upon whom process might be served, that designation becomes in effect a vested right of the persons making such contracts, of which neither the act of the corporation in voluntarily withdrawing from doing business in the State nor the act of the State itself in excluding the corporation can deprive them. *Biggs v. Mutual Reserve*, 128 N. C., 5; *Moore v. Mutual Reserve*, 129 N. C., 31; *Woodward v. Mutual Reserve*, 178 N. Y., 485; *Birch v. Mutual Reserve*, 181 N. Y., 583, *affd.* 200 U. S., 612; *Mutual Reserve v. Phelps*, 190 U. S., 147.

The theory of these ruling is that the State in granting permission to the corporation to enter its borders and to make con-

tracts with its citizens has stipulated as a condition thereof, that each such citizen with whom the corporation makes a contract shall have the right to have his rights and obligations determined in the courts of that State, and that he shall not have to seek the tribunals of another State; that, as to each contract which the corporation makes, it does so upon this express condition, which thereby enters into the contract of such person, so that the corporation cannot deprive him of his right to appeal, if necessary, to the courts of his own State, and to bind the corporation by service upon the designated agent.

This doctrine contains nothing which warrants an extension thereof to such a case as that at bar. The condition is for the benefit and protection of a certain class of people, those with whom the corporation contracts while acting under the State's permission. As soon as that permission is surrendered or withdrawn the class is complete and cannot be enlarged.

That is the full length to which the cases have gone. No case has been cited holding that general jurisdiction, such as is claimed by plaintiff in error, can be predicated upon such facts as are set forth in this record.

SECOND POINT.

The North Carolina Court when it rendered these four judgments did not have jurisdiction of the defendant corporation. There was no service of process except upon the Insurance Commissioner, and the Insurance Commissioner was not the agent of the defendant to receive service of process in such actions.

In this case there is and can be no contention that service of process was made upon any officer or recognized agent of the defendant corporation. The only service made was upon the Insurance Commissioner. The Insurance Commissioner, while, under the authorities heretofore cited, deemed to be the agent of the corporation for accepting service in all actions upon lia-

bilities contracted by the defendant to citizens of North Carolina while doing business in that State, had no authority either in law or fact to receive service of process in any other action. Service here was therefore a nullity.

The contention that service upon the Insurance Commissioner was sufficient to give the Court jurisdiction rests upon the language of the so-called Willard Act (Record, p. 5, fol. 8) and of the power of attorney executed by the defendant corporation pursuant thereto. These were construed by the Court of Appeals adversely to the plaintiff's contention. Such conclusion did not constitute a denial of any right which plaintiff had under the Constitution of the United States, (*Smithsonian Institution v. St. John*, 214 U. S. 19; *St. Louis, K. C. & Col. R. R. Co. v. Wabash R. R. Co.*, 217 U. S. 247) and was correct.

That Act required that the corporation before being permitted to do business in the State should designate the Insurance Commissioner as its agent, upon whom process might be served, with the same force and validity as if served on the company, and that the authority thereof should continue in force irrevocable so long as any liability of the company remained outstanding in that commonwealth.

The power of attorney given by the company (Record, p. 6, fol. 10), was drawn in accordance with these requirements and filed with the Insurance Commissioner.

Prior, however, to the service of the process upon which these four judgments are based, the defendant corporation, in consequence of another statute passed in North Carolina forbidding it to transact business there except upon terms with which it could not comply, withdrew all its agents from the State, and, on May 17, 1899, formally revoked this power of attorney, delivering a copy of its resolutions revoking the same to the Insurance Commissioner on May 20, 1899 (Record, pp. 8, 9, fols. 15, 16).

This action on the part of the defendant corporation was effectual to deprive the Insurance Commissioner of all power and authority, except in the excepted cases already referred to, to represent this defendant or to bind it by his act in receiving service of process. Except as to such persons to whom the cor-

poration was then under liabilities in the State of North Carolina, the corporation had the absolute right to revoke such power of attorney and it did so. This is true not merely because the quality of revocability is inherent in a power of attorney, but as well because there was not, upon a fair construction of the language thereof, any intention on the part of the State of North Carolina to exact or of the corporation to confer a power of attorney which should be irrevocable other than as to the classes of persons already referred to.

A.

It is well settled, that a power of attorney, although irrevocable in terms, is revocable unless coupled with an interest or given for a consideration. (*Hunt v. Rousamanier's Adm.*, 8 Wheat, 174; *Knapp v. Alvord*, 10 Paige 205; *Story on Agency*, 9th Ed., page 587, §476.)

In this case the plaintiffs in these several actions, in which these judgments were recovered, had no interest in the power of attorney given to the Insurance Commissioner of North Carolina to accept service of process at the time it was given, nor had they acquired any prior to the time when it was revoked. Prior to December, 1901, the resident plaintiff in those actions (Wadsworth) had no relation to the defendant whatever, and the defendant never incurred any liability to Wadsworth directly. His only claim against the defendant was as assignee of certain alleged causes of action which arose elsewhere, three in New York and one in New Jersey, for alleged breach of contracts made in those States. For aught that appears none of the assignors was ever in the State of North Carolina. Moreover, although there had been prior similar statutes in force in North Carolina at all times while the defendant was doing business there, it is the fact that those contracts were all made long prior to the passage of the Willard Act and the execution of the power of attorney. How can it be said that the power of attorney was coupled with an interest in any of these parties?

As little is it possible to say that the power of attorney was given for a consideration. Certainly there was no considera-

tion moving to the defendant from any of these parties, neither from the assignors who had made their contracts with the defendant in New York and New Jersey respectively, nor from the assignee (Wadsworth) who never had any dealings with the defendant.

But it is unsound and untrue to say that the power of attorney was given for a consideration or that the corporation contracted generally that it should be irrevocable for all purposes so long as any liability was outstanding in North Carolina. If it be claimed that the corporation made such a contract with the State, what were the terms of that contract? What did the State contract to do? Did it bind itself to permit the corporation to carry on its business in the State for a single day even? It did not. It could have revoked the permission which it had given on the following day. And certainly in such event if the corporation had made one contract in the State it would be unreasonable and unconscionable to say that the corporation had thereby subjected itself to be sued in the courts of North Carolina upon all its contracts wherever made so long as that solitary policy-holder was alive, even though both he and the company fulfilled the obligations of their contract. The truth is that the only contract which the corporation makes is with the policy-holder and he contracts only for his own benefit and that of the beneficiary named in his policy, not for the world at large.

At most the action of the State is unilateral. It does not obligate itself, and if it be deemed that the grant of permission is a consideration for a contract by the corporation, that consideration is like the alleged obligation continuing in its nature, so that when the consideration is withdrawn the obligation must also be held to cease, except as to those parties, who, by contracting with the corporation while the permission was in force, acquired a vested right under their contracts to have the designation of an agent continued irrevocable as to them. As to all other persons, such as the plaintiffs in these actions, it is revocable.

B.

The fair construction of the so-called Willard Act is, that only a power of attorney which should be irrevocable, as to those persons who contracted with the corporation in North Carolina, was required. This statute was passed not as a part of an act defining the jurisdiction of the courts, or of an act regulating the service of process in its courts, where obviously it would have belonged, had the Legislature intended to make any such provision as is contended for by the plaintiff in error. That was not the purpose of the State. The legislature, with the object of protecting its citizens against the risk of being obliged to resort to the courts of a foreign jurisdiction, made it a condition of permitting foreign insurance corporations to come into the State, solicit local business and make contracts there, that the corporation should provide a means whereby such persons could enforce their rights against the company, so long as any of them should have claims against the defendant outstanding.

That such was the scope and purpose of the statute in question is shown by the decision of the Supreme Court of North Carolina in *Moore v. Mutual Reserve*, 129 N. C. 31 (Record, p. 15, fol. 26), where it is said: "The State had the "right to prescribe the terms upon which the defendant might "carry on its business here. * * * The defendant being "permitted, *proceeded to make contracts with the citizens of "the State, and became liable to them under these contracts.* "One of the provisions upon which the defendant was allowed "to do business here was that James R. Young, Insurance "Commissioner, and his successors in office, should be consti- "tuted its agent, upon whom service of process might be made, "and that said agency *should continue so long as the defend- "ant had any liabilities remaining unsatisfied in this State aris- "ing from or out of its said business of insurance* * * *

"It is conceded that, as a general rule, a principal has the "right to revoke a power of attorney at any time, whether it "is in terms irrevocable or not. But to this general rule there "are well-established exceptions as to where it is coupled with

"an interest, or where it is contractual in its nature, given for a consideration and for the protection of some one, or some interest. In our opinion this power falls under this exception to the general rule. It was contractual in its nature; was given upon consideration that defendant should have the right to carry on its business in this State, and for the protection of those who should deal with the defendant."

In that case there was no holding and there has been none in any other case decided by the Supreme Court of North Carolina that the power of attorney was irrevocable as to all persons.

The plain inference from the language above quoted is that the Court regarded the power of attorney as required for the benefit of a distinct class of people, that is to say, those persons who should "deal with the defendant" in North Carolina, while the defendant was acting under the permission conferred upon it by that State. It is clear that the North Carolina Court took the same view, as to the purpose of such a statute, as did the New York Court in this case (Record, p. 44), when it said: "We, therefore, pass to the consideration of plaintiff's second contention based upon the wording of the power of attorney. In so doing and in construing this instrument and determining whether defendant might revoke it and escape from its consequences as to the majority of the judgments involved in this action, we should keep in mind the policy which led to the adoption of the statute under which it was executed. This policy, briefly stated, involved and voiced the determination upon the part of the State that it would not allow a foreign insurance company to exercise the privilege of doing business within the limits without securing to its citizens who might there be dealt with, an arrangement by which they might institute actions and enforce their contracts and policies at home and without being driven into some foreign state where the company might have its origin and principal place of business.

"Statutes requiring the execution of some such agreement by foreign corporations as is invoked against the defendant here, have always been regarded as primarily designed for the protection of the citizens of the state enacting the legislation

"and who might acquire rights under contracts executed with them or for their benefit while they were such citizens. Such was the underlying principle and view which led to the decisions in the *Woodward* case, in *Lafayette Ins. Co. v. French* (18 How. U. S. 404), in *Conn. Mut. Life Ins. Co. v. Spratley* (172 U. S. 602) and in *St. Clair v. Cox* (106 U. S. 350).

"It would be quite beyond the spirit of those decisions to hold and we cannot believe that it was the further policy of such legislation to create and perpetuate a local forum to which, under guise of an assignment to some resident, non-residents of far distant states might flock for the purpose of instituting litigation upon contracts issued to them at their homes, against a corporation there readily subject to service and which long before had attempted in good faith to withdraw from the jurisdiction thus hunted out.

"Holding this view, we are not willing to decide that defendant's power of attorney was irrevocable as against the four foreign claims upon which recovery was had in North Carolina. It is true that, as the statute required, said power of attorney upon its face was irrevocable so long as any liability of the company should remain outstanding in said State. But it is well settled that a power of attorney, although by its literal terms irrevocable, may be revoked unless some interest or right founded or created upon the faith thereof requires its perpetuation and continuance. (*Hunt v. Roussmanier's Admr.*, 8 Wheaton, 174; *Knapp v. Alvord*, 10 Paige, 205; *Story on Agency* (3d ed.), sec. 476.)

"The citizens of North Carolina who had taken contracts from the defendant while it was there doing business in reliance upon this power of attorney which had been executed for their protection under the requirements of the statute were entitled to have it remain unrevoked as provided by its terms. As we have already seen, they are to be regarded as having made their contracts upon the faith of it, and as against them defendant could not escape from its consequences.

"But the plaintiffs in the North Carolina actions, who secured their claims from non-resident assignors, occupied no such position. These claims, under contracts executed in

"other states, cannot by any possibility be regarded as having been contracted or acquired in reliance upon this provision for service within the State of North Carolina. The assignees, who saw fit to embark upon the acquisition of foreign claims, did not do so in innocent reliance upon the right to bring such suits in their own State, for long before they began the accumulation of claims against the defendant it had formally, and, as we believe, in good faith, withdrawn from the State where they lived and given formal notice of its revocation of the power of attorney. They did not acquire any such right to enforce jurisdiction in the courts of their own State against the defendants as makes it in any way inequitable or unjust that the power of attorney should be revoked. They are not of the class for whose protection it was originally executed. They have not acquired any rights upon the faith of it. The contracts which they seek to enforce were not secured by defendant from those who expected protection under it. We not only think that it is legal and equitable that defendant's revocation should be effective as against those parties, but that it would be extremely inequitable to hold the reverse."

The opinion of the Court of Appeals of New York has thus been set forth because it is on the face of it sound and correct, and fully in accord with the decision of this Court, giving precisely the same scope to a similar statute, in *Mutual Reserve Life Assn. v. Phelps*, 190 U. S., 147. In that case, the plaintiff, Phelps, was a citizen of Kentucky, and was sued upon a cause of action which arose out of transactions had between the plaintiff and defendant, while the latter was carrying on business in the State of Kentucky under license from the State. This Court said: "This and other kindred statutes enacted in various States indicate the purpose of the State that foreign corporations engaging in business within its limits shall submit the controversies growing out of that business to its courts, and not compel a citizen having such a controversy to seek for the purpose of enforcing his claims the State in which the corporation has its home. * * * It would obviously thwart this purpose if this association, having made, as the testimony shows it had made, a multitude of contracts with citizens of Kentucky, should be enabled, by simply with-

"drawing the authority it had given to the insurance commissioner, to compel all these parties to seek the courts of New York for the enforcement of their claims. It is true in this case the association did not voluntarily withdraw from the State, but was in effect by the State prevented from engaging in any new business. Why this was done is not shown. It must be presumed to have been for some good and sufficient reason, and it would be a harsh construction of the statute that, because the State had been constrained to compel the association to desist from engaging in any further business, it also deprived its citizens *who had dealt with the association*, of the right to obtain relief in its courts."

The plaintiff in error cites no case in which such a statute as that now under discussion has received the construction which he here contends for, that such a power of attorney as that given by the defendant in this case can be kept alive by reason of such statute, except as to such persons as acquired vested rights thereunder prior to the revocation of the power of attorney. In *Johnson v. Ins. Co.*, 132 Mass., 432, and *Wilson v. Fire Alarm Co.*, 149 Mass., 24, the defendant, at the time of the service of process, had a usual place of business in Boston. The same situation existed in *Mooney v. Buford Mfg. Co.*, 72 Fed. Rep., 32. In *Youmans v. Title Ins. Co.*, 67 Fed. Rep., 282, while the defendant had ceased to do new business and had so notified the Commissioner of Corporations, there had been no revocation of the power of attorney. None of those cases therefore contains anything in conflict with the cases above cited or in any way bearing upon the question now presented.

It is unnecessary to follow the plaintiff in error into his discussion of the cases upon Interstate Commerce, which he states is confusing, as the defendant confessedly is not engaged in the business of Interstate Commerce. Nor is it necessary to discuss at this point the power of the State to impose conditions upon the grant of permission to foreign corporations to do business therein.

The question here is, what is the condition which the State imposed, and as to that the position of the defendant is that

the condition imposed was for the benefit of such persons who should deal with it in reliance thereon, and that the defendant was free to withdraw at any time from further business, just as the State was free to exclude it at any time, as was the case here, and that in either of those events it was free to withdraw its power of attorney, except as to those persons who had contracted with it in reliance on such power of attorney, and thereby acquired a vested interest in its continuance.

This position is fully sustained by the authorities above cited. It is fair and just, accomplishing the purpose of the State to protect the persons who make contracts in the State with the corporation, and not imposing an unconscionable burden upon the corporation.

Such construction of the act leaves the plaintiff in error's case without any foundation.

THIRD POINT.

As service was not made upon an agent of the company, it is immaterial whether or not defendant was doing business in North Carolina. Defendant was not in fact doing business in North Carolina.

At the outset of this discussion it must be accepted that the power of attorney to the Insurance Commissioner was revocable. If it was irrevocable for all purposes as claimed, then this question is immaterial, because service was made upon him. If it was revocable, then this question is immaterial because service was not made upon an agent of the company.

Acting upon the permission given to it by the State defendant made certain contracts of insurance in North Carolina prior to its withdrawal on May 17, 1899, many of which continued in force after the withdrawal of the company. By the terms of these contracts the premiums were payable in New York and were mailed to the company at that address by the policy holders. Losses were, likewise, payable in New York,

and were paid by the company by checks to the order of the beneficiaries, deposited in the mail in New York. After May 18, 1899, the company had no agents in North Carolina, and solicited no business there. It did no act whatever in that State except the four isolated acts detailed above, two of which took place after these four actions were instituted.

The plaintiff in error maintains that the cases of *Connecticut Mutual Ins. Co. v. Spratley*, 172 U. S. 602, and *Mutual Reserve v. Phelps*, 190 U. S. 147, conclusively establish that on those facts the defendant was doing business in the State so that valid service could be made upon an agent. This case differs from the *Spratley* case in that there service was made upon a regular agent of the company, who was in the State on the business of the company, and from the *Phelps* case, in that there service was made upon the Insurance Commissioner in a suit by a policyholder as to whom the power of attorney was irrevocable. The *Phelps* case adds nothing to the *Spratley* case upon this question. The *Spratley* case contained no general ruling, and is not an authority that such acts constitute a doing of business for all purposes. In that case, the corporation had written a large amount of insurance in the State before it withdrew, and thereafter it had the premiums paid to its former agent, who then resided in an adjoining State. Process was served upon this agent while in the State and this Court held that the corporation was so far doing business in that State as to support service of process, *which process*, it is to be borne in mind, *was issued in an action upon a contract made by the company while it was actually soliciting business and writing policies in the State*. As in the case of authority conferred upon the Insurance Commissioner, which was subsequently revoked (*Mutual Reserve v. Phelps*, 190 U. S. 147), the former relation was held to exist as to those outstanding liabilities. That the Court did not determine any general proposition as to this question, but only passed upon the question whether the corporation could be said to be doing business to such an extent as to be sufficient "for the purpose of a valid service" is shown by *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245, 256.

These cases simply show, that in the absence of the power of attorney to the Insurance Commissioner, the corporation could be sued by any policy-holder in North Carolina, who obtained service upon an *agent* of the corporation because the corporation in continuing its dealings with the policy-holders would be held to be so far doing business in the State as to support such service.

We are not dealing here with such a case. This is a case where a stranger to all the transactions conducted by the defendant in North Carolina instituted an action in that State against the defendant.

It is conceded that no service was made upon any regular agent of the company, and it is, therefore, unnecessary to inquire if the corporation was so far doing business as to have supported service, if such had been made upon a regular agent. The plaintiff in error must establish the proposition that the defendant was so far doing business in the State that by mere force of the statute alone the Insurance Commissioner was its agent despite the revocation of the power of attorney.

The Court of Appeals of New York, rather than falling into grave error of which the plaintiff in error can complain, took the most favorable view of the law possible to sustain the plaintiff's claim, when it declared that it would hold the revocation to be a nullity, if after the revocation the defendant had continued to do business in the State of North Carolina without the permission of the State, in violation of the statute. The Court of Appeals plainly indicated that if the defendant had done business in violation of the statute it would have held that the Insurance Commissioner was its agent *in invitum*, and that defendant would be bound by such service.

Neither the *Spratley* case nor *Commercial Mut. Ac. Co. v. Davis* (*supra*) affords any warrant for this statement. In the *Spratley* case there was a statute "to subject foreign corporations to suit" in that State. The first section of this act provided that any foreign corporation found doing business in the State should be subject to suit there, to the same extent that said corporations were by the laws of the State liable to be sued, *so far as related to any transaction had in whole or in part within the State*, or to any cause of action arising therein,

but not otherwise. The second section provided that any corporation that had any transaction with persons or concerning any property situated in the State, through any agency whatever acting for it within the State, should be held to be doing business within the meaning of the act. The act then provided that process might be served upon any *agent* "found within the county," etc.; and it was under this statute that this Court held that service of process upon the *agent* who actually had charge of the collection of premiums upon policies written by the company in the State was sufficient.

In *Com'l Mutual Accident Co. v. Davis* (*supra*) a statute of Missouri provided that service of process in an action against a foreign corporation "not authorized to do business in this State by the Superintendent of Insurance" might be made upon any agent who shall solicit insurance, etc., or who adjusts or settles a loss. In the case cited service was made upon an *agent* who had been sent into the State to adjust a loss and it was held the existence of contracts with residents of Missouri, the payment of premiums, etc., was a sufficient doing of business to support such service.

In these two cases cited, service was made upon an agent of the company. The real point decided by the Court, in those cases, was that: "It is not necessary that express authority to receive service of process be shown. The law of the State may designate an agent upon whom service may be made, if he be one sustaining such relation to the company that the State may designate him for that purpose, exercising legislative power within the lawful bounds of due process of law. This was held in effect in *Connecticut Mutual Life Insurance Company v. Spratley*, 172 U. S., 602.

"We think the State did not exceed its power and did no injustice to the corporation by requiring that when it clothed an agent with authority to adjust or settle the loss, such agent should be competent to receive notice, for the company, of an action concerning the same."

Those cases relate to service upon an *agent* of the corporation, and it was with reference to service upon such agents that this Court said: "That it is essential, in order to obtain jurisdiction over a foreign corporation, having, as in the case

"at bar, neither property nor agent in the State, that it be "doing business in the State, is settled by numerous decisions "of this court. *St. Clair v. Cox*, 106 U. S., 350; *Goldney v. Morning News*, 156 U. S., 518; *Barrow Steamship Company v. Kane*, 170 U. S., 100; *Connecticut Mutual Life Insurance Co. v. Spratley*, 172 U. S., 602; *Conley v. Mathieson Alkali Works*, 190 U. S., 406; *Lumbermen's Insurance Company v. Meyer*, 197 U. S., 407; *Peterson v. Chicago, Rock Island & Pacific Railway Company*, 205 U. S., 364; *Commercial Mutual Accident Ins. Co. v. Davis*, 213 U. S., 245, 255."

And it was with reference to service upon an *agent* that this Court declared that the doing of business shown in such cases was sufficient "for the purpose of a valid service."

There is nothing in either of those cases which will warrant a claim that the fact of doing business will do away with the necessity of the person served being an agent. In *Commercial Mut. Acc. Co. v. Davis*, this Court recognizes that the legislature may under certain limitations designate an agent upon whom service may be made. It is unnecessary to determine whether this would permit the designation of the Insurance Commissioner for the reason that North Carolina has not made such a designation. It has not declared that if a foreign corporation does business in that State service of process upon the Insurance Commissioner shall be effectual to begin an action against such corporation for any cause whatever wherever arising. If it had, it would go far beyond the provision sustained in the *Spratley* case, and it is evident that it would go beyond the "lawful bounds of due process of law."

The only thing which North Carolina did was to say to the corporation, if you want permission to do business in this State, you must *appoint* the Insurance Commissioner your agent. After this had been done, the State said that if the foreign corporation wanted to continue to do business there after June 1, 1899, it must do other things, and the corporation thereupon surrendered its permission and revoked its power of attorney.

As the State of North Carolina has made no effort to create an agency by statutory declaration, it is not necessary

to discuss its power to do so. The plaintiff in error cites numerous cases to establish the proposition that a State may impose any condition it pleases in permitting foreign corporations to enter the State to do business, and alleges that the State may absolutely forbid the corporation to do business within its borders. That there are limitations to this rule, so far as concerns the imposition of conditions, is well settled, however (*Cable v. U. S. Life Ins. Co.*, 191 U. S., 288, 307), and it may safely be denied that the State has the power to forbid the doing of such acts as this defendant is shown to have done or to impose conditions on the right to do them. While the State can forbid the corporation coming into the State to make a contract, it cannot forbid its citizens lawfully making a contract with the corporation at its domicile and thereafter performing the contract through the mail. *Allgeyer v. Louisiana*, 165 U. S. 578. The same must necessarily be true of a contract lawfully made within the State. And on the other hand it cannot say to the corporation which has lawfully made a contract while in the State that it can receive the benefits and perform the obligations only upon conditions to be set by the State. The State may exclude the corporation from its borders when it cannot exclude an individual, but it cannot impair the obligation of its contracts any more than it can an individual's, nor deprive it of the benefits which flow therefrom. *Bedford v. Eastern Building & Loan Ass'n*, 181 U. S., 227, 240.

This question is academic, however, inasmuch as the State of North Carolina has not attempted to create any such agency, and the question as to the defendant's doing business is immaterial, because of the failure to serve an agent of defendant.

FOURTH POINT.

Before it revoked the appointment of the Insurance Commissioner of North Carolina as its attorney upon whom process could be served in that State, the Mutual Reserve Fund Life Association was licensed to do business in that State; after such revocation it would have been, as to any new business which it might have done in the State, violating the North Carolina law, but not subjecting itself to the jurisdiction of the North Carolina Courts over its person by so "doing business." Any provision in the Statutes of North Carolina making it subject to such jurisdiction merely because it was "doing business" in violation of law without service upon a then authorized agent in the State is in violation of the Constitution of the United States and a judgment in personam against it not based on personal service on an authorized agent is void.

Calendonian Coal Co. v. Baker, 196 U. S. 432, 444.

Wetmore v. Karrick, 205 U. S. 141.

Cella Commission Co. v. Bohlinger (C. C. A.), 147 Fed. Rep. 419.

In stating the foregoing proposition, we by no means admit that the record shows that the company was "doing business" in North Carolina after the revocation of the power of attorney. On the contrary, we believe we have already demonstrated that it was not "doing business" in the State thereafter. But, even if it had been, the mere subsequent doing of business in the State would not serve to revive and reinstate the revoked power of attorney, so as to make service upon the Insurance Commissioner sufficient to sustain a judgment in personam. Such subsequent service to be good must be in

cases upon liabilities existing in the State of North Carolina at the time the power of attorney was revoked. Liabilities created by assignments to citizens of North Carolina from citizens of other States *long after the revocation of the power of attorney to the Insurance Commissioner* cannot become the basis of judgments *in personam* based upon service upon the Commissioner, even though it be shown that subsequent to the revocation of the power of attorney the company had again, and unlawfully, entered the State of North Carolina and transacted certain business there arising out of its old liabilities. It is not sued in this action upon such old liabilities, and service was not made upon the persons or agents through whom it conducted such new transactions. The mere "doing" of new business in the State did not suffice to again make the Insurance Commissioner an attorney in fact upon whom process could be served in cases based on such newly created, assigned claims.

FIFTH POINT.

The judgments upon which this action was founded were entered by the North Carolina Court without its having jurisdiction of the defendant. They were therefore not enforceable in New York, and the judgment of the Court of Appeals should be affirmed.

WILLIAM BEVERLY WINSLOW,
Solicitor for Receivers
Defendants in Error.

WILLIAM HEPBURN RUSSELL,
FRANK H. PLATT,
Of Counsel.

218 U. S.

Argument for Plaintiff in Error.

HUNTER v. MUTUAL RESERVE LIFE INSURANCE COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 39. Argued November 7, 1910.—Decided December 12, 1910.

A few separate and disconnected transactions by a foreign corporation after its withdrawal from a State, all relating to matters existing before such withdrawal do not constitute doing business in that State so as to preclude such a corporation from revoking the power of attorney to accept process given by it to a state officer as required by statute of the State to enable it to enter and do business in the State. *Connecticut Mutual Life Ins. Co. v. Spratley*, 172 U. S. 602; *Mutual Reserve Fund Life Association v. Phelps*, 190 U. S. 147; *Mutual Reserve Ins. Co. v. Birch*, 200 U. S. 612; *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245, distinguished.

A power of attorney to a state officer to accept process required by statute to be given by a foreign corporation as a condition for doing business in the State although irrevocable in form, may be revocable, on the withdrawal of such corporation from the State, as to matters not connected with business transacted in such State or with residents thereof; and the courts of one State are not required to give full faith and credit, under the Federal Constitution, to a judgment of another State against a corporation based on service on a state officer of that State, in which said corporation had done business but from which it had in good faith withdrawn after revoking the power of attorney which it had given to such officer as a condition for doing business in the State, and where the cause of action did not arise in, or was not connected with a transaction arising in such State, or in favor of a citizen thereof.

184 N. Y. 136, affirmed.

THE facts are stated in the opinion.

Mr. Paul Armitage for plaintiff in error:

A State has the arbitrary power to exclude foreign in-

insurance companies altogether from her territory. *Hooper v. California*, 155 U. S. 648, 655. The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. Issuing a policy of insurance is not a transaction of commerce. Such contracts are not interstate transactions though the parties may be domiciled in different States. They do not constitute a part of the commerce between the States. *Paul v. Virginia*, 8 Wall. 168; *Phila. Fire Association v. New York*, 119 U. S. 110; *Crutcher v. Kentucky*, 141 U. S. 47; *Hooper v. California*, 155 U. S. 648.

A State has the power, if she allow any such insurance company to enter her confines, to determine the conditions on which the entry shall be made and the right to enforce any conditions so imposed. The power to exclude embraces the power to regulate and the power to enact and to enforce such regulations.

When a foreign insurance corporation undertakes to transact business in a State other than that in which it is incorporated, it submits itself to the authority of the courts of such other State, and is bound, so long as that business continues, by the statutory provisions respecting the method of such courts obtaining jurisdiction over it. *Pringle v. Woolworth*, 90 N. Y. 509; *People v. Life Insurance Co.*, 7 App. Div. 297; *Gibbs v. Queens Ins. Co.*, 63 N. Y. 120. It becomes bound by judgments rendered upon service on the designated agent, because it has consented so to be bound. *Douglass v. Ins. Co.*, 138 N. Y. 220; *Mutual Reserve Assn. v. Phelps*, 190 U. S. 147; *Gibson v. Mfg. Ins. Co.*, 144 Massachusetts, 81; *Aldrich v. Blatchford*, 175 Massachusetts, 369; *Vose v. Cockcroft*, 44 N. Y. 415; *Sherman v. McKeon*, 38 N. Y. 266; *Phyfe v. Eimer*, 45 N. Y. 102. The service on the insurance commissioner was not effectual. *Mutual Life Ins. Co. v. Spratley*, 172 U. S. 610; *Mutual Reserve Assn. v. Phelps*, 190 U. S. 147.

Upon the facts herein, the defendant company con-

tinued to do business in North Carolina, after the attempted revocation of the power of attorney given to the insurance commissioner, and was actually doing business within the State on the date when service of process was made in each of the suits resulting in the four judgments. *Paul v. Virginia*, 8 Wall. 168; *Phila. Association v. New York*, 119 U. S. 110; *Crutcher v. Kentucky*, 141 U. S. 47.

The business of insurance is not within the protection of the commerce clause of the Federal Constitution. A foreign insurance corporation has no right to do any part of its insurance within the borders of a State, except by its express permission and under the conditions imposed.

It is only when a corporation undertakes to engage in a local business elsewhere than in the State of its creation that it comes within the grasp and control of other state sovereignty. The case of a foreign insurance company is wholly different. It is not engaged in interstate commerce. No portion of its business is of that character.

The Court of Appeals held that the defendant insurance company did not continue to do any business within the State of North Carolina after May 18, 1899, and was not doing business therein at the time of service of process in the suits in question, but this was grave error. The Mutual Reserve Insurance Company continued to do and was at the time of service of process doing insurance business within the State and subject to the jurisdiction of its courts. *Mutual Life Ins. Co. v. Spratley*, 172 U. S. 602; *Goldey v. Morning News*, 156 U. S. 519; *Merchants' Mfg. Co. v. Railway*, 13 Fed. Rep. 358; *Birch v. Mutual Reserve Ins. Co.*, 200 U. S. 612.

Where an insurance company goes into a State and makes contracts of insurance, it does not cease to do business simply because it withdraws its agents and solicits no new business.

The court of North Carolina had jurisdiction in ac-

tions brought against foreign corporations by residents of that State "for any cause of action." *Shields v. Life Ins. Co.*, 119 N. C. 380.

The attempted revocation was not effective to revoke the insurance commissioner's power to receive process in any lawful action.

Even if it be assumed (*arguendo*) that the defendant company in good faith withdrew from North Carolina and ceased to do any business therein after May 18, 1899, it was still liable to be sued in the courts of North Carolina in any action or legal proceeding, and the insurance commissioner was, at the time of the service of process therein, the agent of the defendant for the purpose of service in any action or legal proceeding of every nature of which the courts of North Carolina had jurisdiction.

North Carolina had the right to prescribe such conditions as it saw fit before allowing a foreign corporation to do business within its borders. *Anglo-American Prov. Co. v. Prov. Co.*, 169 N. Y. 506, 510; *Hooper v. California*, 155 U. S. 648; *Aldrich v. Blatchford*, 175 Massachusetts, 371, and cases cited; *Youmans v. Title Ins. Co.*, 67 Fed. Rep. 282; *Johnson v. Ins. Co.*, 132 Massachusetts, 432; *Wilson v. Fire Alarm Co.*, 149 Massachusetts, 24; *Mooney v. Buford Mfg. Co.*, 72 Fed. Rep. 32; *Darlington v. Rogers*, 36 Legal Int. 115.

The power of attorney is not subject to the application of the old doctrine that one not coupled with an interest is revocable, but is one between a sovereign State, acting as the representative of all its citizens, and a corporation, by which the corporation has obtained a lucrative business. This alone is sufficient to sustain the power of attorney and forbid its revocation.

The other authorities establish the same doctrine, that a power of attorney given for a valuable consideration or as security is irrevocable. *McGregor v. Gardner*, 14 Iowa, 326; *Ewel's Evans Agency*, p. 110, note 1; 2 Kent's

Commentaries, 643; Story on Agency (9th ed.), p. 587; *Terwilliger v. Railroad Co.*, 149 N. Y. 87.

Mr. William Beverly Winslow, Mr. Wm. Hepburn Russell and Mr. Frank H. Platt for defendant in error:

The judgments rendered by the Superior Court of North Carolina were not enforceable in New York unless that court had jurisdiction of the person of the defendant. To obtain such jurisdiction it was necessary that process be served upon an authorized agent of the defendant corporation. Art. IV., § 1, Fed. Const.; *Thompson v. Whitman*, 18 Wall. 457; *Huntington v. Attrill*, 146 U. S. 657, 685; *Germania Savings & Loan Society v. Dornilzer*, 192 U. S. 125; *National Exchange Bank of Tiffin v. Wiley*, 195 U. S. 257, 269-270.

To confer jurisdiction upon the courts of a State to render a judgment against a foreign corporation it is essential that service be made upon an agent of the company whom the law will imply is authorized to receive service, and the corporation must be engaged in doing business in such State. *Pennoyer v. Neff*, 95 U. S. 714; *St. Clair v. Cox*, 106 U. S. 350; *Goldey v. Morning News*, 156 U. S. 518; *Barrow Steamship Co. v. Kane*, 170 U. S. 100, 111; *Conn. Mutual Ins. Co. v. Spratley*, 172 U. S. 602; *Conley v. Mathieson Alkali Works*, 190 U. S. 406; *Geer v. Mathieson Alkali Works*, 190 U. S. 428.

The North Carolina court when it rendered these judgments did not have jurisdiction of the defendant corporation. There was no service of process except upon the insurance commissioner, who was not the agent of the defendant to receive service of process in such actions. *Smithsonian Institution v. St. John*, 214 U. S. 19; *St. Louis, K. C. & Col. R. R. Co. v. Wabash R. R. Co.*, 217 U. S. 247.

A power of attorney, although irrevocable in terms, is revocable unless coupled with an interest or given for a consideration. *Hunt v. Rousmanier's Adm.*, 8 Wheat. 174;

Knapp v. Alvord, 10 Paige, 205; Story on Agency (9th ed.), 587, § 476.

The power of attorney in this case was not given for a consideration. Such a power of attorney as this cannot be kept alive by reason of such statute, except as to such persons as acquired vested rights thereunder prior to the revocation of the power of attorney. *Johnson v. Ins. Co.*, 132 Massachusetts, 432; *Wilson v. Fire Alarm Co.*, 149 Massachusetts, 24; *Mooney v. Buford Mfg. Co.*, 72 Fed. Rep. 32; *Youmans v. Title Ins. Co.*, 67 Fed. Rep. 282.

As service was not made upon an agent of the company, it is immaterial whether or not defendant was doing business in North Carolina. Defendant was not in fact doing business in North Carolina. *Connecticut Mutual Ins. Co. v. Spratley*, 172 U. S. 602, and *Mutual Reserve Assn. v. Phelps*, 190 U. S. 147, do not apply. They simply show, that in the absence of the power of attorney to the insurance commissioner, the corporation could be sued by any policy-holder in North Carolina, who obtained service upon an agent of the corporation because the corporation in continuing its dealings with the policy-holders would be held to be so far doing business in the State as to support such service. We are not dealing here with such a case. This is a case where a stranger to all the transactions conducted by the defendant in North Carolina instituted an action in that State against the defendant.

While the State can forbid the corporation coming into the State to make a contract, it cannot forbid its citizens from lawfully making a contract with the corporation at its domicil and thereafter performing the contract through the mail. *Allgeyer v. Louisiana*, 165 U. S. 578. Nor can it impair the obligation of its contracts any more than it can an individual's. *Bedford v. Eastern Building & Loan Assn.*, 181 U. S. 227, 240.

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commissioner of North Carolina as its attorney upon whom process could be served in that State, the Mutual Reserve Fund Life Association was licensed to do business in that State; after such revocation it would have been, as to any new business which it might have done in the State, violating the North Carolina law, but not subjecting itself to the jurisdiction of the North Carolina courts over its person by so "doing business." Any provision in the statutes of North Carolina making it subject to such jurisdiction merely because it was "doing business" in violation of law, without service upon a then authorized agent in the State, is in violation of the Constitution of the United States and a judgment *in personam* against it, not based on personal service on an authorized agent, is void. *Caledonian Coal Co. v. Baker*, 196 U. S. 432, 444; *Wetmore v. Karrick*, 205 U. S. 141; *Cella Commission Co. v. Bohlinger* (C. C. A.), 147 Fed. Rep. 419.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This writ of error is prosecuted to review a judgment of the Court of Appeals of the State of New York, modifying a judgment of the Supreme Court of that State. The judgment of the Court of Appeals was remitted to and made the judgment of the latter court.

The action was brought by Hunter, whom we shall call plaintiff, against the insurance company, which we shall refer to as defendant, upon five judgments obtained in the State of North Carolina, recovered by one Emrick Wadsworth, a citizen of North Carolina, and owned by plaintiff. The judgments were recovered upon policies of insurance issued by defendant, one of which was issued to a citizen of North Carolina while defendant was doing business there, the others to citizens of New York and New Jersey. They were assigned to Wadsworth long after

defendant had attempted to remove from North Carolina. Judgment was rendered for their full amount with interest and costs, to wit, the sum of \$9,965, by direction of the Appellate Division of the court to which the case was submitted upon an agreed statement of facts. The Court of Appeals reduced the same by the amount of the four judgments recovered on the policies issued in New York and New Jersey. The Federal question presented is whether due faith and credit was refused to the judgments, in violation of the Constitution of the United States.

The judgments were obtained by default after service made upon the insurance commissioner of the State. The decision of the case turns upon the validity of the service.

The defendant is a life insurance company, organized under the laws of New York. Prior to March 13, 1899, it was duly admitted to do business in the State of North Carolina, it complying with the laws of the State successively passed, which required insurance companies to appoint agents upon whom service of process could be made.

On March 6, 1899, the legislature passed a law known as the Willard law. The law prescribed that no foreign insurance company should do business in the State until it had, by a duly executed instrument filed in the office of the secretary of state, constituted and appointed the insurance commissioner its true and lawful attorney, upon whom all lawful process in any action or legal proceedings might be served, and agreed that such service should have the same force and validity as if served on the company, and that "the authority thereof" should "continue in force irrevocable so long as any liability of the company" should "remain outstanding in this Commonwealth." Chapter 54 of the Laws of 1899.

On or about the thirteenth of April defendant executed the power of attorney required, and thereupon a license

was issued to it to do business, as provided by law, under which it did business in the State for a time.

The legislature which passed the Willard law passed also a law called the Craig act, by which it was provided that any foreign insurance company desiring to do business in the State after June 1 then ensuing must become a domestic corporation of the State. There were severe penalties prescribed for the violation of the act. The company was subjected to a penalty of \$200 a day for every day it "continued to operate or do business without having complied with the requirements of the act," and it was deprived of the right of suing in the state courts or to enter into any new contracts or enforce those it had made. In addition to the penalty of \$200 it was subjected to a penalty of \$500 for each day that it did business after the first day of June, 1899, "without first becoming a domestic corporation."

The act took effect on the tenth of February, 1899. In May of that year the board of directors of defendant passed a resolution to withdraw from the State and to dispense with and terminate the services of all of its agents. It also revoked the authority of the insurance commissioner to act as its attorney to receive service of process. A certified copy of the resolution was served on the commissioner, and the agents of the company were withdrawn from the State, the premiums upon the policies theretofore issued by it being remitted by mail to its home office, where the policies and premiums were payable, and losses upon policies being paid by check from its office. Outside of this the record shows four transactions: (1) the re-writing of a policy of insurance in 1899, originally issued in 1886, which was mailed from its office in New York; (2) sending a check in payment of a policy issued prior to May 17, 1899, to be delivered upon receipt of certain unpaid assessments; (3) the adjustment in North Carolina, in June, 1902, of a loss upon a policy issued in Washing-

ton, D. C., the beneficiary having removed to North Carolina; (4) the adjustment, by an attorney employed for the purpose, of a claim upon a policy written in North Carolina prior to May 17, 1899. The first two transactions were prior to the beginning of the actions in which the judgments were recovered, and the last two were subsequent to that time. These are the transactions upon which plaintiff relies to establish that defendant was doing business at that time in the State.

Three of the policies upon which judgments were recovered were issued in the State of New York long prior to the year 1899. The fourth policy was issued in New Jersey, also prior to 1899. The assignments to Wadsworth were made in December, 1901, and January, 1902, and the suits were begun on January 20, 1902.

There is no controversy over the power of the State to pass the Willard and Craig acts so called, or to make their provisions conditions upon which foreign insurance corporations could do business in the State. The controversy is over the duration of the conditions. The decision upon that, plaintiff contends, depends upon the question whether the insurance company was doing business in the State at the time the actions on the policies were brought and process served, and, insisting that it was, cites *Connecticut Mutual Life Ins. Co. v. Spratley*, 172 U. S. 602; *Mutual Reserve Association v. Phelps*, 190 U. S. 147. Plaintiff further insists that, even if it be assumed that defendant had withdrawn from the State in good faith and had ceased to do business therein after May 18, 1899, it was still liable to be sued in the courts of the State "in any action or local proceeding of every nature of which the courts of North Carolina had jurisdiction," and that the insurance commissioner was its agent to receive service of process. This contention is based on the provision of the statute which continues the authority of the commissioner "in force and irrevocable so long as any

liability of said company remains outstanding in said State."

If the situation of defendant, regarding what it had done and its obligations, was exactly expressed by the contentions of plaintiff, they might be irresistible. But not only the Willard act but the Craig act must be considered in determining defendant's conduct. It had done business in the State and the former act became a part of its obligations to its policy-holders. The latter act imposed new conditions upon it, and as an alternative to compliance with them required it to remove from the State. An evasion of the requirement was, as we have seen, severely penalized. Money penalties, one of \$200 and one of \$500, for every day it should do business after the first of June, 1899, were imposed upon it and no contract it should make or had made could be enforced in the courts of the State. Such were the alternatives presented by the Craig act. In other words, defendant was given the choice to become a domestic corporation or go out of the State. It chose to go out of the State, and adopted the only way it could to do so. We think such course was open to it and we see no reason to question its good faith.

It is, however, contended that defendant "persisted in doing business in the State and was so found at the time of the service of process in question." Four instances are adduced to sustain the contention, two of which occurred in 1899 and two in 1902. These instances have no relation to one another and no relation to the transactions upon which the judgments were based. Between the first two and the last two there was an interval of three years, and yet it is insisted that there was such connection between them that they constituted doing business continuously in the State, and the defendant was hence precluded from revoking its power of attorney to the insurance commissioner. The contention of plaintiff, so far as based on the

instances adduced, encounters a great difficulty. They were not new business. They related to old transactions, and were intended only to fulfill their obligations. This was the plain duty of defendant, a duty which it could not evade nor could the State even prevent it. *Bedford v. Eastern Building & Loan Association*, 181 U. S. 227. Between doing business for such purposes and doing business generally there is quite a difference. If not, the consequences are somewhat serious. The Craig act, as we have seen, imposes a penalty of \$700 a day for each day after the first day of June, 1899, that a foreign corporation shall do business in the State without conforming to the provisions of the act.

Plaintiff, however, presses with earnestness, in support of his contention, the following cases: *Connecticut Mutual Life Ins. Co. v. Spratley*, 172 U. S. 602; *Mutual Reserve Fund Life Association v. Phelps*, 190 U. S. 147; *Mutual Reserve Ins. Co. v. Birch*, 200 U. S. 612; *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245.

In the *Spratley* case the life insurance policy, which was the subject of the suit, was issued by the insurance company when it was concededly present and doing business in the State of Tennessee. The service was upon an agent by the name of Chaffee, sent to investigate into the circumstances of the death of Spratley and the claims of his widow. These facts distinguish the case from the one at bar. But certain language of the court is quoted to establish, not only was the insurance company so doing business in the State as to justify service of process upon the agent appointed by the company, but doing business generally. The court, through Mr. Justice Peckham, said:

"We think the evidence in this case shows that the company was doing business within the State at the time of this service of process. From 1870 until 1894 it had done an active business throughout the State by its agents

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therein, and had issued policies of insurance upon the lives of citizens of the State. How many policies it had so issued does not appear. Its action in July, 1894, in assuming to withdraw from the State was simply a recall of its agents doing business therein, the giving of a notice to the State insurance commissioner, and a refusal to take any new risks or to issue any new policies within the State. Its outstanding policies were not affected thereby, and it continued to collect the premiums upon them and to pay the losses arising thereunder, and it was doing so at the time of the service of process upon its agent."

And further:

"It cannot be said with truth, as we think, that an insurance company does no business within a State unless it has agents therein who are continuously seeking new risks, and it is continuing to issue new policies upon such risks. Having succeeded in taking risks in the State through a number of years, it cannot be said to cease doing business therein when it ceases to obtain or ask for new risks or to issue new policies, while at the same time its old policies continue in force and the premiums thereon are continuously paid by the policy holders to an agent residing in another State, and who was once agent in the State where the policy holders resided. This action on the part of the company constitutes doing business within the State, so far as is necessary, within the meaning of the law upon this subject. And this business was continuing at the time of the service of process on Mr. Chaffee in Memphis."

This reference to the law in the State must be considered. A statute of the State provided that process might be served upon any agent of a corporation doing business in the State found within the county where the suit was brought, no matter what character of agent such person might be, and in the absence of such an agent it

should be sufficient to serve process upon any person found in the county who represented the corporation at the time of the transaction out of which the suit arose took place. It was under this statute that service was made upon Chaffee. This service was held good, this court saying, in addition to what has been quoted above: "Even though we might be unprepared to say that a service of process upon 'any agent,' found within the county, as provided in the statute, would be sufficient in the case of a foreign corporation, the question for us to decide is whether, upon the facts of this case, the service of process upon the person named was a sufficient service to give jurisdiction to the court over this corporation."

Further explanation of the language of the court is contained in the following passage:

"A vast mass of business is now done throughout the country by corporations which are chartered by States other than those in which they are transacting part of their business, and justice requires that some fair and reasonable means should exist for bringing such corporations within the jurisdiction of the courts of the State where the business was done, *out of which the dispute arises.*" (Italics ours.)

Mutual Reserve Association v. Phelps is distinguished from the case at bar by the same features that distinguish the *Spratley* case from it. The suit was brought by a citizen of the State of Kentucky upon a policy issued when the association was doing a general business in the State through regular agents under a license from the State. The commissioner subsequently cancelled its license, and it withdrew its agents from the State. The service of process in the action was nevertheless made upon the commissioner and sustained. It was stipulated by the parties that outstanding policies were continued in force after the action of the commissioner on which the association had collected and was collecting dues, premiums and assessments, and this court held, on the au-

thority of the *Spratley* case, that the association was doing business in the State. These general words must be qualified, as we have seen, like words in the cited case should be qualified, to protect transactions which had been entered into and to give them the benefit of the law in view of which they were made. This court said: "The plaintiff was a citizen of Kentucky, and the cause of action arose out of transactions had between the plaintiff and defendant while the latter was carrying on business in the State of Kentucky under license from the State." And it was said of the statute that it and "other kindred statutes enacted in various States indicate the purpose of the State that foreign corporations engaging in business within its limits shall submit the controversies growing out of that business to its courts, and not compel a citizen for such a controversy to seek for the purpose of enforcing his claims the State in which the corporation had its home."

Mutual Reserve Life Insurance Company v. Birch was a like case. Certain judgments which were sued on in New York were obtained in actions upon policies issued when the insurance company was doing its regular business in the State of North Carolina, and antedated its resolution to withdraw from the State. The case was rested in the Court of Appeals of New York on *Woodward v. Mutual Life Ins. Co.*, 178 N. Y. 485, 490. It was said in that case that the stipulation of the company in regard to service of process became an obligation of the company precisely as though it "had been incorporated in the policies, and thereafter, whether the company continued to do business in the State or not, policy holders could commence action by service of process upon the Secretary of State," subsequently changed to the insurance commissioner. *Woodward v. Mutual Life Ins. Co.* was cited by this court in its opinion sustaining the judgment in the *Birch* case.

Commercial Mutual Accident Co. v. Davis has the same

characteristics as the cases which we have reviewed and needs no other comment than that it repeated the doctrine of the other cases.

The first contention of plaintiff is, therefore, untenable. The next contention is that even if defendant did withdraw from the State in good faith the authority to the insurance commissioner to receive service of process continued as long as the company had outstanding liabilities in the State. And this, it is insisted, constituted the duration of the authority not only for causes of action arising in the State, but for causes of action arising in other States. In other words, that the language of the statute is not limited by its purpose to protect the resident policy-holders of the company, but for the benefit of every litigant upon any cause of action, and, to use the graphic language of the Court of Appeals, to "perpetuate a local forum to which under the guise of an assignment to some resident, non-residents of far distant States might flock for the purpose of instituting litigation upon contracts issued to them at their homes, against a corporation there readily subject to service and which long before had attempted in good faith to withdraw from the jurisdiction thus hunted out."

This is certainly the logical consequence of plaintiff's contention, and to sustain it he relies upon *Johnston v. Trade Ins. Co.*, 132 Massachusetts, 432; *Wilson v. Martin*, 149 *Id.* 24; *Biggs v. Life Association*, 128 N. C. 5. A statute like that of North Carolina was construed in the Massachusetts cases, and, therefore, the construction given to it is instructive. In all of the cases the corporation had "a domicile of business in the Commonwealth," to use the language of the Supreme Judicial Court of Massachusetts, and the court recognized that the right to sue upon cause of action arising in another State was not within "the main purpose" of the statute passed on, indeed, that it "was not framed for that purpose," but decided that

"the words 'all lawful processes in any action or proceeding' must be held to include all actions which might lawfully be brought against a company thus having a domicile of business in this Commonwealth." In *Wilson v. Martin* the contract sued on was made in the State and was to be performed there.

In *Biggs v. Mutual Reserve Life Association* the policy on which the action was based was issued to a resident of the State. The language of the court was quite general. The court did not discuss whether it was "'ceasing to do business in this State' to transact that business through agents located outside of the State, by means of the mail," though it may be said that the court expressed doubt of it by referring to the *Spratley* case. It was said:

"It is sufficient to point out that the statute requires the power of attorney to be irrevocable, not 'as long as the company continues to do business' in this State, but as long as 'any liability of the company remains outstanding' in this State, and the contract with the State, as expressed in the power of attorney filed by the company, so specifies. No amount of authorities having a more or less fancied analogy can overcome these plain words of the statute and of the power of attorney drawn and filed in conformity thereto. *Green v. Life Association*, 105 Iowa, 628; *Insurance Co. v. Gillett*, 54 Maryland, 213."

This general language must be considered in reference to the case, a conclusion which is justified by the decision of the court in *Moore v. Mutual Reserve*, 129 N. C. 31, where it is said that the State, having the right to prescribe the terms upon which the insurance company might carry on its business in the State, and the company, "being permitted, proceeded to make contracts with the citizens of the State, and became liable to them under these contracts. One of the provisions upon which the defendant was allowed to do business here was that James R. Young, insurance commissioner, and his successors in office

should be constituted its agent, upon whom service of process might be made, and that said agency should continue so long as the defendant had any liabilities remaining unsatisfied in this State arising from or out of its said business of insurance." As to the revocation of the authority of the commissioner the court said:

"It is conceded that, as a general rule, a principal has the right to revoke a power of attorney at any time, whether it is in terms irrevocable or not. But to this general rule there are well-established exceptions as where it is coupled with an interest, or where it is contractual in its nature, given for a consideration and for the protection of some one, or some interest. In our opinion this power falls under this exception to the general rule. It was contractual in its nature; was given upon consideration that defendant should have the right to carry on its business in this State and for the protection 'of those who should deal with the' defendant."

Manifestly, this means who should deal with the defendant in the State. The facts in the case at bar are different from the cited cases. The policies upon which the four judgments were recovered were not issued in North Carolina, and not having been issued under the faith of its laws are not entitled to their remedial sanction. The facts in this case are also different from those in the Massachusetts cases. Defendant did not have "a domicile of business" in the State, nor were the contracts to be performed there. It in good faith withdrew from the State—withdrew indeed under the compulsion of law. We say under compulsion of law, for clearly the Craig act required that as an alternative to compliance with its provisions. It presented a choice to defendant of one of two courses. Defendant accepted one of them, that is, withdrew from the State, and revoked the power which it had given to the insurance commissioner to accept service for it. Revoked it as far as it could do so. It

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could not revoke it as to any "interest or right founded or created upon faith thereof" and which "required its perpetuation and continuance," as the Court of Appeals has correctly said, and we think with that learned court, that it would be extremely inequitable to regard it as irrevocable to plaintiff and those in his situation. Indeed, it is not within the contemplation of the statute that the authority to the commissioner is to be available to those in the situation of plaintiff.

Judgment affirmed.